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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson*

Summary

The present report is the fourth annual report submitted to the Human Rights Council by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson.

In section II, the Special Rapporteur lists the key activities he undertook from 17 December 2013 to 31 December 2014 and, in section III, he examines the humans rights challenges posed by the fight against the Islamic State in Iraq and the Levant and makes recommendations to States.

* Late submission.

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I. Introduction

1. The present report is submitted to the Human Rights Council pursuant to its resolution 22/8. In the report, the Special Rapporteur lists the key activities he undertook from 17 December to 31 December 2014, focuses on the humans rights challenges posed by the fight against the Islamic State in Iraq and the Levant and makes recommendations.

II. Activities of the Special Rapporteur

2. On 13 February 2014, the Special Rapporteur participated as a speaker in a panel discussion entitled "Debating *Kadi II*: United Nations Ombudsperson v. judicial review in Security Council sanctions decision-making" at the London School of Economics.

3. From 23 to 25 February, the Special Rapporteur participated in an expert seminar on the theme "The right to privacy in the digital age", hosted by the Permanent Missions of Austria, Brazil, Germany, Liechtenstein, Mexico, Norway and Switzerland and facilitated by the Geneva Academy of International Humanitarian Law and Human Rights, in Geneva.

4. On 11 March, the Special Rapporteur presented to the Human Rights Council his report on the use of remotely piloted aircraft, or drones, in extraterritorial lethal counter-terrorism operations, including in the context of asymmetrical armed conflict, and its impact on civilians (A/HRC/25/59). He also held an interactive dialogue with the Council on his visits to Burkina Faso (A/HRC/25/59/Add.1) and Chile (A/HCR/25/59/Add.2).

5. On 12 March, the Special Rapporteur participated as a panellist in a side event on the topic "Human rights and drones" and held a press conference during the twenty-fifth session of the Human Rights Council.

6. On 22 September, during the twenty-seventh session of the Human Rights Council, the Special Rapporteur participated in a panel discussion on the topic "Ensuring use of remotely piloted aircraft or armed drones in counter-terrorism and military operations in accordance with international law, including international human rights and humanitarian law". The panel discussion was held pursuant to Human Rights Council resolution 25/22.

7. On 30 September, the Special Rapporteur participated in a hearing on the topic "Drones and targeted killings: the need to uphold human rights" before the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, in Strasbourg, France.

8. On 2 October, the Special Rapporteur participated in a panel discussion on the securitization of public policy in a post-9/11 world, organized by Amnesty International in London.

9. On 23 October, the Special Rapporteur presented to the General Assembly his report on the use of mass digital surveillance for counter-terrorism purposes and the implications of bulk access technology for the right to privacy under article 17 of the International Covenant on Civil and Political Rights (A/69/397).

III. Human rights in the fight against the Islamic State in Iraq and the Levant

10. In recent years, the Islamic State in Iraq and the Levant (ISIL) has emerged as a key actor in the Middle East and, reportedly, beyond. One of many radical groups that found fertile ground in the violent environments created by decades of instability in Iraq and the

more recent conflict in the Syrian Arab Republic, it has in the past two years become a well-organized, dominant armed force controlling large swathes of populated areas in both Iraq and the Syrian Arab Republic.[1] A self-proclaimed caliphate, it attracts a significant number of individuals from around the world to join its ranks. Deeply rooted in sectarian distrust and an absence of inclusive, participatory processes,[2] ISIL has become a symbol of brutality, extreme violence, cruelty and terror, all of which it has imposed on those living under its rule.

11. There is evidence that ISIL has committed serious violations of international law, including genocide, crimes against humanity, war crimes and serious violations of human rights law. The Security Council has determined that ISIL represents a threat to international peace and security, has unequivocally condemned the gross and systematic abuses of human rights by ISIL and has stressed the need to bring perpetrators, including foreign terrorist fighters, to justice, but has failed to take more decisive action or to refer the situation to the International Criminal Court.

12. The United Nations human rights bodies, including the Human Rights Council, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the treaty bodies, as well as special procedures mandate holders, have addressed various aspects of the situation in Iraq and the Syrian Arab Republic, including ISIL. The present report aims to contribute to this work by addressing the human rights issues linked to the actions carried out by ISIL, the adequacy of the response of the Security Council and the civilian impact of the military action taken by States engaged in combating ISIL.[3]

A. Background

13. The origins of ISIL can be traced back to the immediate aftermath of the conflict in Iraq in 2004, when Al-Qaida in Iraq was established by Abu Musab al-Zarqawi. Sectarian, ethnic and religious discrimination had been rife in Iraq. However, the new Government and the "de-Baathification" of public service were clear indications that despite new power arrangements, divides along sectarian lines would continue in the post-conflict context. This was heavily exploited by Al-Qaida in Iraq and by its successor, the Islamic State of Iraq (ISI), which was founded following the death of Al-Zarqawi in 2006.

14. In 2010, ISI appointed Abu Bakr al-Baghdadi as its new leader. Under his leadership, ISI regrouped and became increasingly organized. In 2011, with the Syrian Arab Republic descending into violence, ISI sent a number of operatives to join local radical militants in the Syrian Arab Republic. The Jabhat al-Nusra armed group was formed. In April 2013, Al-Baghdadi announced the merger of ISI and Jabhat al-Nusra into the Islamic State in Iraq and the Levant. Following a power struggle between the leader of Jabhat al-Nusra and the leader of ISI, the two groups formally split, with Jabhat al-Nusra affiliating itself to Al-Qaida, and the formal disavowal of ISIL by Al-Qaida. Abu Bakr al-Baghdadi became the leader of the new armed group, ISIL, which gained control of

[1] See the report of the Independent International Commission of Inquiry on the Syrian Arab Republic entitled "Rule of terror: living under ISIS in Syria", para. 5.

[2] See the report of the Office of the United Nations High Commissioner for Human Rights on the human rights situation in Iraq in the light of the abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups (A/HRC/28/18), para. 2.

[3] The Special Rapporteur wishes to express his sincere thanks to Anne Charbord, Senior Legal Adviser to the Special Rapporteur on the promotion and protection of human rights while countering terrorism, for her contribution to the preparation of the present report, and to Chris Woods, who contributed factual research for the present report.

territory in the north of the Syrian Arab Republic and Iraq previously controlled by ISI and Jabhat al-Nusra.[4]

15. Since the inception of ISIL, its priority has been the construction of a so-called State.[5] In pursuance of this goal, on 29 June 2014, the leader of ISIL renamed the group the "Islamic State" and declared it a caliphate. ISIL now controls territory in Iraq and the Syrian Arab Republic in which an estimated 8 million individuals live. At the time of writing, in Iraq, ISIL controlled swathes of territory in the provinces of Anbar, Ninewa, Salah al-Din, Kirkuk, Diyala, Babil and Erbil, with Iraqi forces making gains in several areas, notably recapturing Tikrit in April 2015. In the Syrian Arab Republic, ISIL controlled large swathes of territory in the governorates of Aleppo, Ar-Raqqah, Idlib, Al-Hasakah and Dayr Az-Zawr. It has also been reported that ISIL directly controls territory in other countries, including Libya.[6] In addition, it has been reported that several groups around the globe have pledged allegiance to ISIL,[7] and in some cases, there has been an "extension" of the territory of the caliphate.[8]

16. ISIL has consolidated its financial capacity by expanding its control over natural resources in both the Syrian Arab Republic and Iraq, notably by seizing oilfields in both countries. It has also been alleged that ISIL seized the reserves of the Iraqi Central Bank held in Mosul in June 2014. ISIL has reportedly received substantial financial support from foreign States, wealthy individuals and charitable organizations.

17. The military capacity of ISIL has continued to grow, largely as a result of looting weapons and military hardware from other Syrian armed belligerents and from the Iraqi army after its successful military campaign in Iraq. It is believed that arms and support provided to other more moderate armed groups have ultimately fallen into the hands of ISIL. ISIL has also purchased military hardware through local markets.

18. The expansion of ISIL has been helped by the inflow of foreign fighters. While figures vary, it is possible that more than 20,000 foreigners have joined the ranks of non-State armed groups in Iraq and the Syrian Arab Republic,[9] from at least 80 countries from

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[4] See "Rule of terror", para. 5; United Nations Assistance Mission for Iraq (UNAMI)/OHCHR, "Report on the Protection of Civilians in the Non International Armed Conflict in Iraq: 5 June–5 July 2014", footnote 3; Report of the Analytical Support and Sanctions Monitoring Team on The Islamic State in Iraq and the Levant (S/2014/815), paras. 1–2, 6–8 and 11–17. See also Patrick Cockburn, *The Rise of Islamic State: ISIS and the New Sunni Revolution* (London and New York, Verso Books, 2015); and Jessica Stern and J.M. Berger, *ISIS: The State of Terror* (London, William Collins, 2015).

[5] See Erin Marie Saltman and Charlie Winter, *Islamic State: The Changing Face of Modern Jihadism*, (Quilliam, 2014) and Stern and Berger, *ISIS: The State of Terror* (chap. 8).

[6] In Barqa (Cyrenaica) in the east, Fezzan in the south, and Tripolitania in the west. See Eric Schmitt and David D. Kirkpatrick, "Islamic State sprouting limbs beyond its base", *New York Times*, 14 February 2015. Available from www.nytimes.com/2015/02/15/world/middleeast/islamic-state-sprouting-limbs-beyond-mideast.html?_r=2. See also Human Rights Watch, "Libya: Extremists Terrorizing Derna Residents", 27 November 2014. Available from www.hrw.org/news/2014/11/27/libya-extremists-terrorizing-derna-residents.

[7] Boko Haram (Nigeria), Abu-Sayyaf (Philippines), Ansar Bait al-Maqdis (Egypt) and Ansar al-Sharia (Yemen), among others, have all reportedly pledged allegiance to the "Islamic State".

[8] See "Rule of terror" para. 17. On 13 November 2014, the leader of ISIL announced the expansion of the Islamic State to "new lands" (Saudi Arabia, Yemen, Egypt, Libya and Algeria) following pledges made to him by various groups active in these territories. ISIL created new provinces in these countries and appointed "governors". See Stern and Berger, *ISIS: The State of Terror*.

[9] See S/2014/815, para. 14. See also Peter R. Neumann, director of the International Centre for the Study of Radicalisation and political violence (ICSR), "Foreign fighter total in Syria/Iraq now exceeds 20,000; surpasses Afghanistan conflict in the 1980s", 26 January 2015.

all parts of the globe.[10] It is reported that most have joined the ranks of ISIL owing to its perceived success,[11] the ease with which one can join and its online presence and propaganda.[12] The proclamation by its leader of ISIL as a caliphate[13] has reportedly galvanized support from radicalized individuals and groups around the world. Individuals join ISIL not only to fight, but also to assist in the building of a "State", with ISIL promoting a sense of religious duty,[14] attracting individuals from diverse backgrounds.[15] Many of these recruits are reportedly experienced fighters, or have the ability to attract others through propaganda.[16] Foreign nationals play a prominent role in the religious, educational and judiciary "systems" of ISIL, which further radicalizes communities under its authority.[17] It has been reported that the military leadership structures of ISIL are largely dominated by foreign fighters.[18]

19. ISIL has consolidated its control over the populations in the territory it holds. By taking advantage of the instability in both Iraq and the Syrian Arab Republic,[19] its ideology and financial capabilities have found resonance among socially and economically desperate communities. It has exploited the existing social fragmentations among sectarian and tribal lines to secure a new network of alliances.[20] Most importantly, through the use of tactics that instil terror in the population, including the calculated use of public brutality and indoctrination, as well as the establishment of monopolistic control over basic services, ISIL has ensured the submission of the communities under its control.[21]

20. ISIL is an organized group[22] that functions under a formalized command with an essentially vertical and hierarchical command structure.[23] It is composed of an armed force, an administrative wing and a religious wing, all under the control of the self-proclaimed caliph, Al-Baghdadi.[24] It operates a harsh, rigid administrative system that is based on provinces and comprises the Al-Hisbah morality police, the general police force, courts and entities managing recruitment, tribal relations and education.[25]

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[10] See Richard Barrett, *Foreign Fighters in Syria* (New York, The Soufan Group, 2014). See also S/2014/815, para. 87.

[11] See S/2014/815, para. 14.

[12] See Saltman and Winter, *Islamic State*.

[13] See "It ain't half hot here, mum: why and how Westerners go to fight in Syria and Iraq", *The Economist*, 30 August 2014.

[14] See Stern and Berger, *ISIS: The State of Terror*.

[15] See "Rule of terror", paras. 17 and 29. See also Stern and Berger, *ISIS: The State of Terror*, which notes that in an article in *Dabiq*, the online English-language magazine of ISIL, it asked for doctors, engineers, scholars and people with military, administrative and service expertise.

[16] See Saltman and Winter, *Islamic State*.

[17] See the report of the Independent International Commission of Inquiry on the Syrian Arab Republic (A/HRC/28/69), para. 127.

[18] See "Rule of terror" paras. 12 and 13.

[19] See S/2014/815, para. 8.

[20] See "Rule of terror", para. 9.

[21] Ibid., para. 1, and A/HRC/28/69, para. 35.

[22] See British Broadcasting Corporation, "UK paying experts to build Islamic State war crimes case", 3 September 2014. Available from www.bbc.co.uk/news/world-middle-east-29052475.

[23] See "Rule of terror", para. 13.

[24] See S/2014/815, paras. 13–17.

[25] See A/HRC/28/69, para. 36.

B. Legal framework

21. The Special Rapporteur has previously recalled the criteria for the existence of armed conflicts of a non-international character,[26] namely the intensity and protraction of the conflict and the degree of organization of the parties. It is generally accepted that ISIL is a sufficiently organized non-State armed group to be considered as a party to the non-international armed conflicts in Iraq and the Syrian Arab Republic,[27] and that the situations in both countries amount to armed conflicts of a non-international character.[28]

22. International humanitarian law applicable to armed conflicts of a non-international character is applicable in both Iraq and the Syrian Arab Republic.[29] All parties to the conflict, including ISIL, are therefore bound by common article 3 of the Geneva Conventions, which establishes minimum standards concerning the treatment and protection of civilians, those no longer actively participating in the hostilities and civilian objects. They are also bound by the customary law norms contained in the protocol additional to the Geneva Conventions of 12 August 1949 relating to the protection of victims of non-international armed conflicts.

23. In addition, it is now well established that in a situation of armed conflict, international human rights law continues to apply, and both international human rights law and international humanitarian law frameworks will act in a complementary and mutually reinforcing way.[30] Both Iraq and the Syrian Arab Republic are parties to the major human rights treaties and a number of optional protocols.[31]

C. Human rights and humanitarian law violations attributable to the Islamic State in Iraq and the Levant

24. The Independent International Commission of Inquiry on the Syrian Arab Republic, established on 22 August 2011 by Human Rights Council resolution S-17/1, the United Nations Assistance Mission for Iraq and OHCHR,[32] as well as a number of non-

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[26] See the Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/68/389), para. 63. See also International Committee of the Red Cross, "How is the term 'armed conflict' defined in international humanitarian law?", opinion paper, March 2008. Available from www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf. See also International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, case No. IT-94-1-A, *Prosecutor v. Duško Tadic*, para. 70, and case No. IT-04-84-T, *Prosecutor v. Ramush Haradinaj et al*, paras. 49 and 60.

[27] See A/68/389, para. 66.

[28] For Iraq, see A/HRC/28/18, para. 13. For the Syrian Arab Republic, see A/HRC/28/69, para. 1. In his report on the implementation of Security Council resolutions 2139 (2014) and 2165 (2014), the Secretary-General referred to a "complex, protracted regional conflict" (see S/2014/756, para. 58).

[29] Neither Iraq nor the Syrian Arab Republic have acceded to the protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts. They are also not parties to the Rome Statute of the International Criminal Court.

[30] For an overview of the legal framework applicable in the Syrian Arab Republic, see the report of the independent international commission of inquiry on the Syrian Arab Republic (A/HRC/21/50), annex 2.

[31] For a full list, for Iraq, see UNAMI/OHCHR, "Report on the Protection of Civilians in the Non International Armed Conflict in Iraq: 5 June–5 July 2014", p. 6; for the Syrian Arab Republic, see A/HRC/21/50, annex 2, para. 8.

[32] See A/HRC/28/18 and UNAMI/OHCHR "Report on the Protection of Civilians in the Non International Armed Conflict in Iraq: 5 June–5 July 2014".

governmental organizations, have extensively investigated and documented grave and systematic violations of international law by ISIL that could amount to genocide, crimes against humanity, war crimes and gross human rights violations,[33] including widespread and systematic attacks on the civilian population.[34]

25. It has been reported that ISIL has specifically targeted religious and ethnic groups in both Iraq and the Syrian Arab Republic and has committed acts of violence against civilians because of their affiliation or perceived affiliation to an ethnic or religious group.[35] Where ISIL has occupied areas with diverse religious and ethnic communities, minorities[36] have been forced to assimilate or flee, ISIL imposing disciplinary sanctions, destroying religious sites and carrying out systematic expulsions. In Iraq, there are reports of a pattern of violence against the Yezidis and, specifically, of men being separated from women and young children, then taken to ditches and summarily executed.[37] It has been reported that at least 700 men were killed in August 2014 after being rounded up, separated from the women and forced to convert. Those who refused were taken to a farm and, after being made to hand over their possessions, were ordered to lie face down on the ground and were filmed by members of ISIL before being shot several times.[38] These acts may, if confirmed, amount to genocide[39] as defined in the Convention on the Prevention and Punishment of the Crime of Genocide. Other acts, including summary executions,[40] abductions on a mass scale[41] and forced conversions, may amount to crimes against humanity and war crimes. In the Syrian Arab Republic, it has been reported that ISIL may have committed a crime against humanity by forcibly displacing the Kurdish population in Ar-Raqqah governorate.[42]

26. The alleged responsibility of ISIL for unlawful killings, including massacres,[43] has also been reported.[44] Summary executions and enforced disappearances of individuals ISIL views as challenging its dominance or opposing it, through a policy of declaring them to be heretics or infidels in order to justify the attacks, has also been widely documented in the Syrian Arab Republic[45] and in Iraq.[46] Individuals targeted include police officers, public servants, members of parliament, tribal and religious leaders, election candidates and hors de combats fighters. Sometimes, individuals are found guilty by ISIL "courts" before being executed,[47] in the absence of any due process. In an effort to control the flow of information and limit freedom of expression, journalists and human rights defenders have been

[33] See A/HRC/28/18, para. 76, and "Rule of terror", paras. 74, 77 and 78.
[34] See, for example, A/HRC/28/69, para. 75.
[35] See A/HRC/28/18, para. 16.
[36] Ibid., para. 16, and "Rule of terror", paras. 24–31.
[37] See A/HRC/28/18, para. 18.
[38] Ibid., para. 19.
[39] Ibid., para. 16.
[40] Ibid., paras. 19 and 28.
[41] Ibid., paras. 16–20.
[42] See "Rule of terror", para. 29.
[43] In October 2013, the Commission of Inquiry adopted the following working definition of a massacre: "an intentional mass killing of civilians not directly participating in hostilities, or hors de combat fighters, by organized armed forces or groups in a single incident, in violation of international human rights or humanitarian law". See A/HRC/28/69, annex II, para. 1.
[44] See A/HRC/28/69, annex II, paras. 21–30.
[45] Ibid., annex II, paras. 21–30 and 68–79. See also "Rule of terror", para. 32.
[46] See, for example, A/HRC/28/18, paras. 29–34.
[47] See UNAMI/OHCHR, "Report on the Protection of Civilians in Armed Conflict in Iraq: 11 September–10 December 2014", p. 10.

summarily executed, abducted, made to disappear and tortured.[48] There are also scores of allegations of torture and ill-treatment of individuals in detention centres, as well as summary punishments for theft, watching football matches, smoking, improper attire, not attending Friday prayers and having tattoos,[49] in breach of ISIL edicts.

27. ISIL has been particularly brutal and discriminatory against women. Information collected indicates that, in addition to confining women largely to their homes and dictating what they must wear, with whom they may socialize and where they may work,[50] ISIS elements have committed sexual and gender-based violence, which may constitute war crimes and amount to crimes against humanity. It is reported that Yezidi women in particular have been the target of killings, widespread and systematic enslavement, including sexual slavery, and rape; women have also been sold and forcibly transferred[51] from northern Iraq to areas under ISIL control in the Syrian Arab Republic, where many remain in captivity.[52] There are also credible reports about the rape of girls as young as 6 years old.[53] The targeting of homosexual men on the basis of their sexuality has also been highlighted.

28. The abuse and violence perpetrated by ISIL against children has been widely documented.[54] This includes summary executions, arbitrary detention, torture, cruel and inhuman treatment and kidnapping. In a particularly disturbing development, education is being used as a tool for indoctrination.[55] Children are reportedly made to watch videos of beheadings[56] and mass executions to desensitize them to forms of violence employed by ISIL. The existence of "cub camps" in which children are taught to use weapons and trained to be deployed as suicide bombers has been reported,[57] and children have been used as executioners. It is also reported that children as young as 8, and possibly 5, have been trained and used in active combat roles. If true, this would constitute a war crime and a violation of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

29. In summary, ISIL has engaged in widespread and systematic human rights and humanitarian law violations of the most serious kinds.[58] Such violations have been most thoroughly documented in connection with ISIL actions in the Syrian Arab Republic by the Independent International Commission of Inquiry, but have also been widely reported by reliable sources in Iraq. The methods used include public beheadings, shootings, stoning,[59] amputations and lashings, with individuals urged to attend executions, following which the corpses are placed on public display, often on crosses, for up to three days.[60] In addition, victims' heads have been placed on spikes alongside park railings, in squares and on the

[48] See "Rule of terror", paras. 39–42, and A/HRC/28/69, paras. 82–83.
[49] See A/HRC/28/18, para. 49, and A/HRC/28/69, annex 2, paras. 67–91 and 159.
[50] See "Rule of terror", paras. 47 and 48, and A/HRC/28/69, para. 187.
[51] See A/HRC/28/18, paras. 35–43.
[52] See A/HRC/28/69, paras. 185–188.
[53] See A/HRC/28/18, para. 40.
[54] See "Rule of terror", paras. 58–62; A/HRC/28/69, paras. 205–213; and A/HRC/28/18, paras. 44–46.
[55] See "Rule of terror", para. 60.
[56] See A/HRC/28/69, para. 207.
[57] Ibid., para. 70.
[58] See "Rule of terror", para. 77.
[59] Ibid., para. 32.
[60] Ibid., para. 36. See also the reports of the Independent International Commission of Inquiry on the Syrian Arab Republic (A/HRC/27/60) paras. 30–38 and 65–74, and A/HRC/25/65, paras. 25–33 and 57–61. In each case, it would be necessary to determine that the victims were civilians and not members of other armed groups.

roundabouts of the larger towns.[61] The displaying of mutilated bodies serves as a warning to the local population of the consequences of failure to submit to the armed group's authority,[62] to deter those who may oppose the group's rule and to spread terror among the population.[63] The attacks perpetrated by ISIL on churches and historic monuments that do not represent military targets are apparently committed to enforce religious and ideological hegemony and to instil fear in minority populations.[64] The systematic and targeted assassination and abduction of community, political and religious leaders, government employees, education professionals, journalists and health workers[65] also appear to be aimed at demonstrating the supremacy of ISIL in areas it controls. The brutal nature and overall scale of abuses appears to be intended to reinforce the group's absolute monopoly on political and social life and to enforce compliance and conformity among communities under its control.[66] The result is that civilians who remain in ISIL-controlled areas live in a state of constant and almost unimaginable fear.[67]

30. Some still argue that human rights, as a body of law, can only bind States, and cannot or should not apply to non-State armed groups. However, as the Special Rapporteur has previously highlighted in other contexts, a central tenet of international human rights law is that it must keep pace with a changing world. Human rights apply at all times, inherently belong to individuals and are key to individual dignity. Increasingly, non-State armed groups control parts of territories in which populations live. This is the case with ISIL, which now controls large swathes of territory in which millions of individuals live; it has declared itself a "State", and runs both a civil and a military administration, including the establishment of a "court" system. The threshold for ISIL to be bound by human rights obligations has clearly been met.[68] This means, at a minimum, that ISIL is bound under international law to respect core human rights obligations, such as the right to life, the absolute prohibition of torture, cruel, inhuman and degrading treatment, the prohibition of slavery and the prohibition of enforced disappearance, as well as the right to freedom of thought, conscience and religion.

31. In addition, where ISIL engages in violations that are unrelated to the conflict and not direct consequences of it, the governing legal framework should be international human rights law. In practice, this means that ISIL is legally bound to respect freedom of expression, freedom of assembly and freedom of movement. These rights should be protected without discrimination on any of the grounds prohibited by international law. The right to a fair trial should also be guaranteed. In areas of substantive overlap between international human rights and international humanitarian law, the principles that provide assistance in determining which framework is applicable are those of *lex specialis*[69] and effective control: the more effective control ISIL has over a territory or individuals, the

[61] See "Rule of terror", paras. 33–35.
[62] Ibid., para. 33.
[63] Ibid., para. 21.
[64] Ibid., para. 31.
[65] See UNAMI/OHCHR "Report on the Protection of Civilians in Armed Conflict in Iraq: 6 July–10 September 2014", pp. 5–8.
[66] See "Rule of terror", para. 30.
[67] Ibid., para. 19.
[68] See the statement by the President of the Security Council on the situation in Iraq (S/PRST/2014/20), p. 2, and Security Council resolution 2170 (2014), para. 3.
[69] See "Fragmentation of international law: difficulties arising from the diversification and expansion of international law – Report of the Study Group of the International Law Commission" (A/CN.4/L.682 and Corr.1), paras. 56–57.

greater is the extent to which human rights law will constitute the appropriate legal framework.[70]

D. Accountability

32. As the Security Council recalled in its resolution 2170 (2014), accountability for all gross or serious violations of international human rights law and international humanitarian law is essential to ensure justice, provide redress to the victims and prevent future violations. The Governments of Iraq and the Syrian Arab Republic bear primary responsibility for protecting persons under their jurisdiction and ensuring accountability for the commission of grave crimes. This implies a duty to take action so that violations are prevented, stopped and not repeated; to investigate alleged violations effectively, promptly, thoroughly and impartially and, where required, to bring alleged perpetrators to justice in accordance with domestic and international law; and to provide adequate remedy and redress to victims. Domestic courts in Iraq and the Syrian Arab Republic have jurisdiction over all violations committed in their territories, whether by nationals or foreigners, and they should exercise their jurisdiction where it is possible to do so.

33. However, in the light of the operational obstacles to the effective exercise of jurisdiction, and bearing in mind concerns regarding respect for the right to a fair trial that have been expressed regarding the judicial systems in both Iraq[71] and the Syrian Arab Republic,[72] the involvement of the International Criminal Court or the creation of an ad hoc international tribunal to investigate and prosecute the crimes allegedly committed by, inter alia, ISIL must be regarded as a priority.[73] The Special Rapporteur joins the call made by the United Nations High Commissioner for Human Rights, the Independent International Commission of Inquiry on the Syrian Arab Republic and others for the involvement of the International Criminal Court regarding the situation in both Iraq and the Syrian Arab Republic. The failure of the Security Council to refer the situation in the Syrian Arab Republic to the Court has contributed to crimes continuing to be committed unabated.[74] As neither Iraq nor the Syrian Arab Republic are parties to the Rome Statute, the Court has no territorial jurisdiction over crimes committed on their soil. The Prosecutor of the Court has reviewed those cases in which the Court could exercise personal jurisdiction over alleged perpetrators who are nationals of a State party to the Rome Statute, but has said that the prospects of the Court investigating and prosecuting those with most responsibility in the ISIL leadership would be remote.[75] In the absence of a Security Council resolution referring the situation to the Court, the Special Rapporteur calls on the Governments of Iraq and the

[70] See *International legal protection of human rights in armed conflict* (United Nations publication, Sales No. E.11.XIV.3), p. 63. On the alleged violations, see, for example, the reports of the Independent International Commission of Inquiry on the Syrian Arab Republic (A/HRC/21/50), para. 134, and A/HRC/25/65, para. 129; "Rule of terror", para. 20; UNAMI/OHCHR, "Report on the Protection of Civilians in Armed Conflict in Iraq: 6 July–10 September 2014", p. 11; and A/HRC/28/18, paras. 48 and 49.

[71] See UNAMI/OHCHR, "Report on Human Rights in Iraq: January–June 2014".

[72] See A/HRC/28/69, paras. 103–105.

[73] Ibid., para. 146 (b).

[74] On 22 May 2014, despite the backing of 13 of its members, the Security Council was unable to adopt a resolution that would have referred the situation in the Syrian Arab Republic to the International Criminal Court as a result of vetoes by two permanent members, China and the Russian Federation.

[75] See the statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the alleged crimes committed by ISIS, 8 April 2015. Available from www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/otp-stat-08-04-2015-1.aspx.

Syrian Arab Republic to become parties without delay to the Rome Statute and to accept the jurisdiction of the Court over the current situation under article 12 (3).

34. In addition, where it is suspected that returning foreign fighters have committed war crimes or international crimes, courts in the countries of nationality of those fighters should exercise extraterritorial jurisdiction for the crimes committed, where it is available under national law.[76] As recommended by the Independent International Commission of Inquiry on the Syrian Arab Republic, the principle of universal jurisdiction should be used in accordance with national law to investigate and prosecute persons and groups implicated in egregious violations.[77] In this respect, the Special Rapporteur takes note of the decision of the Commission to share information with States willing to exercise their jurisdiction over the crimes committed in the Syrian Arab Republic.[78] As noted by the Commission, every measure should be taken to ensure that individuals responsible for serious violations of international law are held to account.[79]

E. Response of the Security Council

35. As the Security Council was unable to reach consensus on the issue of accountability for international crimes, it has focused on ISIL as a terrorist group. ISIL has been included in the Council's comprehensive international counter-terrorism framework, which was adopted under Chapter VII of the Charter of the United Nations and Statute of the International Court of Justice, and is legally binding on all States Members of the United Nations, following a determination that international terrorism associated with Al-Qaida represents a threat to international peace and security. In addition, the Council has taken measures relating to "foreign terrorist fighters".

36. On 30 May 2013, the Security Council added ISIL to the Al-Qaida Sanctions List as an alias for Al-Qaida in Iraq (QE.J.115.04). As the Council makes clear in its resolution 1989 (2011), any individual or entity designated by the Security Council Sanctions Committee as associated with Al-Qaida, which includes any form of support for the activities of Al-Qaida, or any cell, affiliate, splinter group or derivative thereof, may be listed. Despite the fact that ISIL has severed its ties with Al-Qaida, the Council considers it a splinter group of Al-Qaida.[80]

37. As a consequence of this listing, ISIL is subject to the threefold sanctions regime imposed by the Security Council, namely: assets freeze, travel ban and arms embargo. In addition, the Council, in its resolution 2170 (2014), specifically indicates that individuals, groups, undertakings and entities that provide support to ISIL, broadly described as those financing, arming, planning or recruiting for ISIL through information and communications technologies, including the Internet and social media, can also be listed on the Al-Qaida Sanctions List and be subject to the same sanctions.[81]

38. The Special Rapporteur has already provided a comprehensive overview of the various shortcomings of the sanctions regime that the United Nations has established with regard to Al-Qaida, in particular the quasi-legislative and quasi-judicial functions performed by the Security Council in administering the regime, in the absence of

[76] Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism (see A/HRC/28/28, para. 44).

[77] See A/HRC/28/69, para. 145 (a).

[78] Ibid., paras. 106–107.

[79] Ibid., para. 145 (a).

[80] See Security Council resolution 2170 (2014), para. 18.

[81] Ibid., para. 18.

independent judicial review that can deliver an effective remedy at the level of the United Nations (see A/67/396). While acknowledging the significant improvements brought to the regime,[82] concerns remain that most of the shortcomings that had been identified still remain valid and that the regime continues to fall short of international minimum standards of due process. In particular, the Ombudsperson's comprehensive reports are still not legally binding; the process still lacks transparency; the Ombudsperson still has limited access to confidential information, a challenge she describes as the most significant limitation to the effectiveness of the Ombudsperson process; and the institutional arrangements for the Office of the Ombudsperson still do not afford it proper safeguards for independence.[83]

39. The Security Council has also taken decisive action against ISIL through a number of subsequent resolutions adopted under Chapter VII of the Charter of the United Nations. In its resolution 2170 (2014), the Council condemned in the strongest terms the terrorist acts of ISIL and its continued gross, systematic and widespread abuses of human rights and violations of international humanitarian law. The Council emphasized the need to ensure that ISIL is held accountable for abuses of human rights and violations of international humanitarian law and stressed the need to bring to justice those within ISIL who commit terrorist acts, as well as foreign terrorist fighters. Recalling that threats to international peace and security caused by terrorist acts must be combated in accordance with international law, including international human rights and humanitarian law, it adopted a number of measures and sanctions to prevent the financing of ISIL, including revenues generated from control of oilfields and related infrastructure, kidnapping for ransom and donations.[84]

40. The threat posed by the influx of foreign fighters, albeit not a new phenomenon,[85] has gained increasing prominence in the context of the armed conflicts in Iraq and the Syrian Arab Republic. With States intent on preventing the ranks of ISIL from growing and exacerbating the conflict, as well as on preventing returning nationals from carrying out attacks on their own soil (so-called "blowback" attacks) or further radicalizing their nationals, the Security Council took decisive action to address the issue of foreign fighters.

41. As already noted, in its resolution 2170 (2014) the Security Council called upon Member States to take national measures to suppress the flow of foreign terrorist fighters joining ISIL and other individuals, groups and entities associated with Al-Qaida in Iraq and the Syrian Arab Republic. In its resolution 2178 (2014), the Council went further, requiring States to adopt a number of measures regarding foreign terrorist fighters, defined as "individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict". In that resolution, the Council decided that Member States should prevent the travel of foreign terrorist fighters, that they should bring them to justice and that they should criminalize a number of actions linked to such fighters concerning travel and its funding and organization or facilitation of recruitment.

[82] See Security Council resolutions 1904 (2009), 1989 (2011), 2083 (2012) and 2161 (2014).

[83] See S/2015/80, paras. 37–53.

[84] See Security Council resolution 2199 (2015), which builds on resolution 2170 (2014) by refining the range of tools available to block the financing of ISIL.

[85] See Geneva Academy of International Humanitarian Law and Human Rights, "Foreign fighters under international law", Geneva Academy Briefing No. 7 (Geneva, Geneva Academy, 2014).

42. Resolution 2178 (2014) includes a specific and comprehensive human rights clause.[86] Significant concerns have nonetheless been expressed concerning the broad nature of some of the provisions and the lack of definition of the terms "terrorism" or "extremism", which, on the basis of past experience, may lead some Governments to use the resolution to justify repressive measures against political dissenters with the apparent endorsement of the Security Council.[87] Similarly, the standard adopted for enforcement action, that is, credible information that the individual will engage in the acts set out in the resolution, arguably provides too much latitude to States and could result in arbitrary enforcement action being taken.

43. In the same resolution, the Security Council also calls upon Member States to require airlines to provide advance passenger information to the appropriate national authorities in order to detect when individuals who may fall under the definition of foreign terrorist fighters are travelling by civilian aircraft. While it is clear from the language of the resolution that this should not be done by resorting to profiling based on stereotypes founded on grounds of discrimination prohibited under international law, well-founded concern has been expressed about the practical implementation of the resolution, as it may have a serious impact on a person's right to privacy. Measures that interfere with the right to privacy must be authorized by domestic law that is accessible and precise and that conforms to the requirements of the International Covenant on Civil and Political Rights. Those measures must also pursue a legitimate aim and they must meet the tests of necessity and proportionality.[88]

44. In the view of the Special Rapporteur, the approach adopted by the Security Council to the phenomenon of foreign terrorist fighters could create legal uncertainty in efforts to identify those to whom it is intended to apply, whether to members of all non-State armed groups or those defined as terrorist groups under national law, international law, or both. The Council stresses the urgent need to implement these measures with respect to those fighters associated with ISIL, among others. However, the scope of the resolution is not limited to foreign fighters directly associated with ISIL but, rather, depends on national implementing measures. The Special Rapporteur considers that States should ensure that, in implementing resolution 2178 (2014), they ensure that national measures are applied only to those individuals who are conclusively shown to meet the criteria laid down by the Council. They should also ensure that they strictly observe the human rights provisions contained within the resolution itself, which include the right to independent and impartial adjudication and adequate due process, and, more broadly, the principle of legality enshrined in article 15 of the International Covenant on Civil and Political Rights.[89] Criminal liability, including any definition provided in the law, must be precisely framed and must respect the principle of legal certainty.

45. A number of other rights may also be affected by national measures to implement the resolution.[90] Measures such as the seizure and retention of passports or identity cards

[86] See General Assembly resolution 60/288.

[87] See A/HRC/28/28, paras. 46 and 47. See also Martin Scheinin, "Back to post-9/11 panic? Security Council resolution on foreign freedom fighters", *Just Security*, 23 September 2014, available from http://justsecurity.org/15407/post-911-panic-security-council-resolution-foreign-terrorist-fighters-scheinin/, and "A Comment on Security Council Res 2178 (Foreign Terrorist Fighters) as a 'Form' of Global Governance", *Just Security*, 6 October 2014, available from http://justsecurity.org/15989/comment-security-council-res-2178-foreign-fighters-form-global-governance/.

[88] See A/69/397 and the report of OHCHR on the right to privacy in the digital age (A/HRC/27/37).

[89] See A/HRC/28/28, paras. 48 and 49.

[90] Ibid., paras. 49 and 50.

may affect freedom of movement; the stripping of citizenship can affect the prohibition of arbitrary deprivation of nationality or the absolute prohibition of refoulement; restrictions on travel, or bans from entering one's country, can affect the right to work, to a family life and to health; and various types of house arrests or preventive detention can affect the right to safety and security. The right to a fair trial can be adversely affected by preventive measures, such as those that limit freedom of movement or touch upon the right to a nationality and are adopted by members of the executive, based on classified information, without the opportunity for adequate independent judicial review.

F. Impact on civilians of the military response to the Islamic State in Iraq and the Levant

46. On 8 August 2014, the United States of America carried out air strikes against ISIL positions close to Erbil in Iraq. On 23 September 2014, military action against ISIL started in the Syrian Arab Republic. The international coalition of States led by the United States against ISIL includes over 60 partners,[91] with various levels of involvement, from carrying out air strikes to providing advice. The States involved in the coalition are different in Iraq and in the Syrian Arab Republic, with some States active in only one or the other.[92] By 27 March 2015, the coalition had reported over 3,000 air strikes in which more than 11,000 munitions had been released. The United States has been responsible for 92 per cent of the coalition air strikes in the Syrian Arab Republic and 70 per cent of the coalition air strikes in Iraq.

47. According to the Government of the United States, the legal basis for the coalition's use of force in Iraq is intervention by invitation, or consent. On 18 June 2014, at a hearing of the United States Senate Appropriations Defense Subcommittee, the Chairman of the Joint Chiefs of Staff, General Martin Dempsey, informed the Subcommittee that the Government of Iraq had requested United States military air strikes to help combat violence in Iraq led by ISIL.[93] This request for assistance by the Government of Iraq is solid legal ground on which to determine the legality of the air strikes that take place on Iraqi territory.[94]

48. As the Government of the Syrian Arab Republic did not explicitly provide consent for air strikes against ISIL on its territory, the legal basis for the use of force on Syrian territory lies elsewhere. On 20 September 2014, the Minister for Foreign Affairs of Iraq sent a letter to the President of the Security Council in which he explained that ISIL had established a safe haven outside Iraqi borders that was a direct threat to the security of the people and territory of Iraq (see S/2014/691, annex). He also explained that Iraq had requested the United States to lead international efforts to strike ISIL sites and military strongholds with the express consent of Iraq. On 23 September 2014, in a letter to the Secretary-General, the Permanent Representative of the United States referred to the

[91] See www.state.gov/s/seci/index.htm.

[92] Some of the key actors in Iraq and the Syrian Arab Republic are: the United States, Canada, Jordan, Morocco and the United Kingdom, with intelligence-only flights in the Syrian Arab Republic; in Iraq: Australia, Belgium, France, the United Kingdom, the Netherlands and Denmark; in the Syrian Arab Republic: Bahrain, Saudi Arabia, the United Arab Emirates and Qatar.

[93] See Andrew Marszal and Arron Merat, "Iraq crisis: June 18 as it happened", *The Telegraph*, 18 June 2104. Available from www.telegraph.co.uk/news/worldnews/middleeast/iraq/10908057/Iraq-crisis-Isis-launch-overnight-attack-on-Iraqs-biggest-oil-refinery-live.html.

[94] See Claus Kreß, "The fine line between collective self-defense and intervention by invitation: reflections on the use of force against "IS" in Syria", *Just Security*, 17 February 2015. Available from http://justsecurity.org/20118/claus-kreb-force-isil-syria/.

serious threat faced by Iraq of continuing attacks from ISIL coming from safe havens in the Syrian Arab Republic (S/2014/695). She noted that "States must be able to defend themselves, in accordance with the inherent right of individual and collective self-defence ... when, as is the case here, the government of the State where the threat is located is unwilling or unable to prevent the use of its territory for such attacks". She also said that the United States had initiated necessary and proportionate military action in the Syrian Arab Republic in order to eliminate the ongoing ISIL threat to Iraq, including by protecting Iraqi citizens from further attacks and by enabling Iraqi forces to regain control of Iraqi borders.

49. The right to self-defence as an exception to the absolute prohibition on the use of force is enshrined in article 51 of the Charter of the United Nations and is contingent on a State facing an imminent risk of an armed attack on its territory. Under orthodox principles of international law, the use of force against an armed group located on the territory of another State is only justified on grounds of self-defence if the territorial State consents, if the actions of the group concerned are legally imputable to the territorial State or if the territorial State is harbouring the armed group concerned. International law may also recognize a right of cross-border pursuit where an armed group uses the territory of a bordering State as a place to which to retreat in order to regroup before recrossing the border for the purpose of returning to engage in armed conflict. In the absence of such a connection, however, the extraterritorial use of force against a non-State armed group located on the territory of another State has traditionally been regarded as a violation of sovereignty.

50. However, as the Special Rapporteur has previously noted,[95] some States are now taking the view that the right to self-defence can be exercised even where the non-State armed groups have no operational connection with the host State. States adopting this analysis hold that if, after a reasonable opportunity, the territorial State has failed effectively to neutralize a threat that emanates from an armed group operating within its borders, either because it is unable or unwilling to do so, then the State that is threatened with attack is entitled under the law of self-defence to cross the territorial State's borders and use military force in self-defence against the group that presents the threat. As the Permanent Representative of the United States noted in her letter to the Secretary-General, "the Syrian regime has shown that it cannot and will not confront these safe havens [used by ISIL for training, planning, financing, and carrying out attacks across Iraqi borders and against Iraqi people] effectively itself". On this analysis, the United States and its coalition partners are entitled to use force in the Syrian Arab Republic at the request of Iraq in order to defend Iraq and its people against attacks by ISIL, which is operating in Iraq but is using Syrian territory for the purpose of planning and preparing its military operations, and they are entitled to enter Syrian territory for this purpose because the Government of the Syrian Arab Republic has shown itself unable or unwilling to deal with the threat emanating from ISIL.

51. Many of the 8 million Iraqis and Syrians who live in ISIL-controlled territory live in urban areas. It has been reported, in Iraq and the Syrian Arab Republic, that ISIL deliberately places its fighters among civilians or in civilian areas, or uses civilian infrastructure, such as schools and hospitals, as military bases to conduct operations and shield its fighters from attack, or to ensure civilian casualties in the event of attack.[96] Major towns have been frequently targeted by coalition air strikes, for example the heavy

[95] See A/68/389, paras. 56–57.

[96] See OHCHR/UNAMI, "Report on the Protection of Civilians in Armed Conflict in Iraq: 11 September–10 December 2014", pp. 10 and 17.

bombing of central Tikrit.[97] Basing forces among civilians and civilian infrastructure constitutes a serious violation of applicable standards of international humanitarian law and can constitute a war crime. At the same time, however, international humanitarian law is clear that direct attacks against civilian objects are prohibited,[98] unless and for such time as they are military objectives.[99] There is a presumption of civilian character for objects normally dedicated to civilian purposes. In case of doubt, the principle of distinction and the requirement to do everything feasible to verify that targets are military objectives, not civilian objects, prevail.[100]

52. Accurate targeting can be a particular challenge in such an environment. Obtaining accurate intelligence is essential, but it has been reported that only 25 per cent of coalition air strikes in the Syrian Arab Republic, and 5 per cent in Iraq, are pre-planned.[101] With few personnel on the ground to provide accurate targeting, crews rely heavily on targets of opportunity. In recognition of this more challenging environment, the United States has confirmed that the recent high standards it demanded of its drone strikes in Pakistan, which required "a near certainty" that civilians would not be killed, could not apply to Iraq or the Syrian Arab Republic given the intense nature of the conflict.[102] In such circumstances, the coalition has a particular need for good aerial intelligence, surveillance and reconnaissance. This would not only allow planners to scout potential targets, but also to conduct battle damage assessments in the wake of strikes to gauge their effect on local populations, and so modify tactics accordingly.

53. The accurate identification of those directly participating in hostilities is critical to a proper application of the principles of distinction, proportionality and precaution. The Special Rapporteur recalls that there is a lack of international consensus on the rules governing direct participation in hostilities.[103] According to the International Committee of the Red Cross, an individual may be considered as a member of a non-State armed group, and therefore targeted at any time, only if they have assumed a "continuous combat function" within that group.[104] If this criterion is not met, an individual who is otherwise affiliated with an armed group can be regarded as having protected civilian status and may be targeted with deadly force only if, and so long as, the individual is playing a direct part in the conduct of hostilities. States that are involved in the military action in both Iraq and the Syrian Arab Republic, including those States carrying out air strikes, should disclose the criteria they adopt for direct participation in hostilities. This is critical to achieving transparency as to the forms of conduct that may expose civilians to deadly force, to evaluating whether any attack is lawful under international law, and for evaluating the number of civilian casualties resulting from an attack.

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[97] See United States Department of Defense, "Coalition Forces Conduct 17 Airstrikes in Tikrit", 26 March 2015. Available from www.defense.gov/news/newsarticle.aspx?id=128458.

[98] See International Committee of the Red Cross (ICRC), Customary International Humanitarian Law, rule 8.

[99] Ibid., rule 10.

[100] Ibid., rule 16.

[101] See Eric Schmitt, "U.S. Adds Planes to Bolster Drive to Wipe Out ISIS", *New York Times*, 26 November 2014. Available from www.nytimes.com/2014/11/27/us/us-adds-air-power-but-isis-presents-elusive-target.html.

[102] See Michael Isikoff, "White House exempts Syria airstrikes from tight standards on civilian deaths", 30 September 2014. Available from https://news.yahoo.com/white-house-exempts-syria-airstrikes-from-tight-standards-on-civilian-deaths-183724795.html.

[103] See A/68/389, paras. 69–72.

[104] See Nils Melzer, "Interpretive guidance on the notion of direct participation in hostilities under international humanitarian law", ICRC. Available from www.icrc.org/eng/assets/files/other/icrc-002-0990.pdf.

54. In Iraq, there have been numerous reports of civilian casualties in air strikes and artillery operations attributed to Iraqi and associated forces, which raise serious questions as to the proportionality of those military operations.[105] In a welcome development, on 13 September 2014, the Prime Minister of Iraq ordered the Iraqi air force to suspend bombardments in civilian areas, including those controlled by ISIL, and expressed his commitment to protecting civilians.[106] There are also confirmed instances in which Iraqi forces have dropped leaflets warning civilians to evacuate ISIL-controlled areas owing to impending military action.

55. In October 2013, the Government of the Syrian Arab Republic intensified its widespread and systematic attack against the civilian population of Aleppo for allegedly supporting or hosting armed groups. At the time of writing, government forces were employing a similar strategy in Ar-Raqqah, the "capital" of ISIL, with apparent disregard for the principle of distinction.[107] It has been reported that civilians were killed in indiscriminate and disproportionate attacks by the Government on ISIL-controlled areas of Aleppo, Ar-Raqqah, Dayr az-Zawr and Al-Hasakah governorates.[108] On 18 October 2014, in Minbej (Aleppo), government forces reportedly hit a bakery, killing approximately 25 civilians. In July 2014, in Al-Mayadin (Dayr az-Zawr), government air strikes seemingly targeted a municipal building being used as an ISIL base, but also hit a market, killing 13 civilians. On 3 September 2014, in Al-Shula (Dayr az-Zawr), a government jet struck an ISIL checkpoint and reportedly killed 21 civilians, most of them children.

56. The coalition rarely cites casualty data, although the chief of the Air Force of Jordan estimated in February 2015 that the alliance had killed 7,000 ISIL militants.[109] In contrast, the coalition has conceded no non-combatant deaths in seven months of air strikes, despite clear indications to the contrary. Verification of fatalities remains difficult. That said, credible monitoring groups and media and social media sites in both Iraq and the Syrian Arab Republic have recorded casualties. A provisional analysis by the not-for-profit project Airwars.org indicates that an estimated 100 coalition air strikes (out of more than 3,000) had been flagged for concern by 27 March 2015. A non-combatant death toll as high as 420, with over 100 additional claimed "friendly fire" fatalities, were reported. These figures need to be treated with much caution as many are single-source incidents, are poorly reported or are linked to events in which the cause of death remains contested. Nevertheless, some cases are well-documented with eyewitness testimony, video and photographic evidence, missile fragments, named victims and/or confirmed coalition air strikes at the location. According to the United States Central Command, of the 38 incidents of concern it has examined, 34 have been discounted while four civilian casualty allegations are currently being investigated in three separate investigations. Even so, United States Central Command continues to insist that "no non-combatant deaths from coalition air strikes in either Iraq or Syria have officially been confirmed".[110] This would appear highly questionable given the intensity of the air war and the accumulating evidence base.

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[105] See UNAMI/OHCHR, "Report on the Protection of Civilians in Armed Conflict in Iraq: 11 September–10 December 2014", p. 17.

[106] See "Iraq's prime minister halts airstrikes in civilian areas", Deutsche Welle, 13 September 2014. Available from www.dw.de/iraqs-prime-minister-halts-airstrikes-in-civilian-areas/a-17920325.

[107] See A/HRC/28/69, para. 50.

[108] Ibid., annex 2, para. 53.

[109] See "Jordan: ISIS lost 20% of its military capabilities", *Al Arabiya News*, 8 February 2015. Available from http://english.alarabiya.net/en/News/middle-east/2015/02/08/Jordan-ISIS-lost-20-of-its-military-capabilities.html.

[110] On-the-record e-mail from United States Central Command spokesman Major Omar Villarreal, 25 March 2015.

The Independent International Commission of Inquiry on the Syrian Arab Republic, for example, first reported coalition-inflicted civilian casualties in November 2014.[111]

57. There remains a significant absence of transparency with regard to coalition operations in both Iraq and the Syrian Arab Republic. Each nation participating in the air war operates under unique rules of engagement, and transparency levels differ significantly.[112] While the United States and Canada routinely report the date and location of each strike, other nations only report weekly or monthly. In the case of Belgium and the Arab members of the coalition, no public reporting of any actions presently occurs. With air strikes being carried out by multiple actors, including the Syrian and Iraqi air forces, as well as by the Islamic Republic of Iran — often at the same locations as coalition strikes — it remains impossible for affected civilians to know, in most circumstances, which State was responsible for an event, a concern noted by the United Nations Assistance Mission for Iraq (UNAMI).[113] Transparency on the part of coalition States conducting these operations is therefore imperative.

58. The Special Rapporteur recalls that, in any case in which civilians have been, or appeared to have been, killed, the State responsible is under an obligation to conduct a prompt, independent and impartial fact-finding inquiry and to provide a detailed public explanation. This obligation is triggered whenever there is a plausible indication from any source that civilian casualties have been sustained, including where the facts are unclear or the information partial or circumstantial, and whether civilian casualties were anticipated or not.[114]

G. Role of the Security Council in authorizing the use of force

59. The actions of ISIL have undermined international peace and security, grossly and systematically abused the fundamental rights of civilians on a wide scale, gravely violated international humanitarian law and international human rights law and fractured the territorial integrity of two States. Nonetheless, not all the permanent members of the Security Council are in favour of taking more robust military measures. As noted by the Secretary-General, the privileges of tenure and the veto power that the permanent members of the Council have been granted under the Charter entail a particular responsibility to not employ their veto in situations of manifest failure to meet obligations relating to the responsibility to protect civilians.[115] The Special Rapporteur notes that, given the reports relating to the possible commission of acts of genocide, Council members may have a more specific responsibility[116] given that they are all bound by the obligation to prevent this most

[111] See "Rule of terror", para. 23.

[112] See Chris Woods, "Pentagon in Denial About Civilian Casualties of U.S. Airstrikes in Iraq and Syria," *Foreign Policy*, 3 December 2014. Available from http://foreignpolicy.com/2014/12/03/pentagon-in-denial-about-civilian-casualties-of-u-s-airstrikes-in-iraq-and-syria/.

[113] See UNAMI/OHCHR, "Report on the Protection of Civilians in Armed Conflict in Iraq: 11 September–10 December 2014", footnote 32.

[114] See A/68/389, paras. 41–45.

[115] See the report of the Secretary-General on implementing the responsibility to protect (A/63/677), para. 61.

[116] "A State's obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed". See the International Court of Justice, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*) (Merits), Judgement of 26 February 2007, paras. 430 and 431.

serious of international crimes.[117] The Special Rapporteur notes with interest the broad support among many Member States, civil society groups and representatives of the United Nations for initiatives relating to a responsibility to refrain from using veto powers to block action aimed at ending atrocity crimes.

IV. Conclusions and recommendations

60. **States are under an obligation to take measures to protect civilian populations from widespread and systematic acts of violence and terrorism. It is essential that any response be grounded in respect for international law, including international humanitarian law, international human rights law and refugee law.**

61. **In the light of the grave international crimes and systematic human rights violations committed by ISIL forces in Iraq and the Syrian Arab Republic, the Special Rapporteur:**

(a) **Recommends to the Security Council that the situation in Iraq and the Syrian Arab Republic be referred to the International Criminal Court as a matter of urgency, or that an ad hoc tribunal be established promptly to try those responsible;**

(b) **Calls on Iraq and the Syrian Arab Republic to become parties to the Rome Statute and to accept the jurisdiction of the International Criminal Court over the current situation;**

(c) **Recommends that States prosecute individuals who have committed such crimes where they are able to exercise jurisdiction.**

62. **States must ensure that all the measures they adopt at the national level to address the threat posed by ISIL and other such groups, including measures taken to implement Security Council resolution 2178 (2014), fully comply with their obligations under international human rights law, as outlined in the present report.**

63. **All States engaged in military action against ISIL in Iraq and the Syrian Arab Republic are under an obligation to conduct prompt, independent and impartial fact-finding inquiries in any case where there is a plausible indication that civilian casualties have been sustained, and to make public the results.**

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[117] All permanent members are bound by art. 1 of the Convention on the Prevention and Punishment of the Crime of Genocide.

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Human rights situation in Palestine and other occupied Arab territories

Report of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1*, **, ***

Summary

The present report contains the main findings and recommendations of the commission of inquiry established pursuant to Human Rights Council resolution S-21/1. In the report, the commission urges all actors to take immediate steps to ensure accountability, including by guaranteeing the rights of all victims to an effective remedy.

* Late submission.
** For detailed findings of the commission of inquiry, see document A/HRC/29/CRP.4.
*** The annexes to the present report are circulated as received.

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I. Introduction

1. On 23 July 2014, the Human Rights Council, by resolution S-21/1, decided to urgently dispatch an independent, international commission of inquiry to investigate all violations of international humanitarian law and international human rights law in the Occupied Palestinian Territory, including East Jerusalem, particularly in the occupied Gaza Strip, in the context of the military operations conducted since 13 June 2014, whether before, during or after. Pursuant to resolution S-21/1, the President of the Council appointed three experts to the commission: William Schabas (Chair), Mary McGowan Davis and Doudou Diène.

2. The commission formally began its work on 16 September 2014. Following the resignation of Professor Schabas on 2 February 2015, the President of the Council designated Justice Davis as Chair. The Office of the United Nations High Commissioner for Human Rights (OHCHR) established a secretariat to support the commission. Notwithstanding the urgency expressed by the Council to dispatch the commission, the secretariat was not fully constituted until the end of November 2014.

3. The commission repeatedly requested Israel to cooperate, including by granting it access to Israel and the Occupied Palestinian Territory, including the West Bank, East Jerusalem and the Gaza Strip (see annex I). Regrettably, Israel did not respond to these requests. Subsequently, the commission learned from a press release[1] that no such cooperation would be forthcoming. The Government of Egypt, when requested to facilitate entry into the Gaza Strip through the Rafah crossing, responded that it was not possible owing to the prevailing security situation. The commission thanks the Government of Jordan for facilitating its two visits to Amman.

4. The commission received full cooperation from the State of Palestine, including the Permanent Observer Mission of the State of Palestine to the United Nations Office at Geneva. It met with representatives of Palestinian ministries in Amman, who provided a range of documents. The commission also spoke to members of the authorities in Gaza, who submitted several reports.

5. The commission addressed to the Government of Israel and the Government of the State of Palestine a list of questions relating to specific incidents and legal and policy issues. A comparable list was sent to Hamas. Only the State of Palestine responded.

II. Mandate and methodology

6. The commission interpreted its mandate as requiring it to examine alleged violations of international human rights and humanitarian law occurring between 13 June and 26 August 2014 across the Occupied Palestinian Territory, in particular in Gaza, and in Israel, and to determine whether such violations had been committed. It examined existing accountability mechanisms and their effectiveness, and the immediate and continuing impact of the military operations on the affected populations and their enjoyment of human rights. The commission considered that the victims and their human rights were at the core of its mandate. Its activities were thus informed by the wish to ensure that the voices of all victims are heard, and that the commission's recommendations will strengthen the protection of the civilian population in the Occupied Palestinian Territory and in Israel.

[1] Israel Ministry of Foreign Affairs, "Israel will not cooperate with UNHRC investigative committee", press release, 13 November 2014.

7. The commission is grateful to the many victims and witnesses who shared their experiences and other relevant information. The fact that, despite its repeated requests, the commission was not granted access to the Occupied Palestinian Territory and Israel posed a challenge for conducting interviews in person with victims and witnesses and made viewing the sites where violations were alleged to have been committed impossible. Owing to the restrictions on movement preventing victims and witnesses from leaving Gaza, the commission obtained first-hand testimony by means of interviews conducted via Skype, videoconference and telephone. It conducted confidential interviews with victims and witnesses from the West Bank in Jordan (in November 2014 and January 2015) and with victims and witnesses from Israel in Geneva (in January 2015).

8. The commission and its secretariat conducted more than 280 interviews with victims and witnesses and received more than 500 written submissions and other documentation from a wide range of sources (see annexes II and III). It reviewed information publicly available, including on official websites of the Government of Israel. The commission used all the information gathered in making its assessments while carefully considering the credibility and reliability of sources. It gave particular weight to first-hand testimonies, recognizing the limitations resulting from the fact that the interviews were conducted remotely, the lapse in time since the incidents, and the possibility of reprisals.

9. Some sources requested that their submissions be treated confidentially for fear of possible consequences of testifying before the commission, including for their safety. Primary responsibility for protecting victims, witnesses and other persons cooperating with the commission rests with their States of residence and nationality. The commission appreciated the valuable contributions made to its work by OHCHR, United Nations agencies and programmes, non-governmental organizations and experts.

10. Consistent with established practice, the commission employed a "reasonable ground" standard of proof in its factual assessment of the incidents investigated and legal analysis of the patterns found. Such a standard is lower than that required in criminal trials; the commission therefore does not make any conclusions with regard to the responsibility of specific individuals for alleged violations of international law.

11. Given its restricted access, its limited resources and the short time frame available for its inquiry, the commission selected incidents on the basis of certain criteria, in particular, the gravity of the allegations of violations of international humanitarian law and international human rights law; their significance in demonstrating patterns of alleged violations; access to victims, witnesses and supporting evidence; and the geographic location of the incident.

III. Legal framework

12. All parties to the conflict are bound by the relevant provisions and rules of international humanitarian and human rights treaty and customary law. The commission considers that, in situations of armed conflict or occupation, international humanitarian law and international human rights law apply concurrently,[2] and shares the position of United Nations human rights treaty bodies and the International Court of Justice, according to which Israel bears responsibility for implementing its human rights treaty obligations in the Occupied Palestinian Territory.[3] The State of Palestine is bound by the obligations

[2] Advisory opinion of the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian Territory, 9 July 2004, para. 106.

[3] Ibid., paras. 111–113. See also CCPR/C/ISR/CO/4, para. 5.

contained in the treaties to which it has acceded. The authorities in Gaza must respect and ensure human rights norms because of their exercise of government-like functions.

13. A number of core principles of international humanitarian law govern the conduct of hostilities. Firstly, the principle of distinction requires that parties to a conflict distinguish between civilians and civilian objects on the one hand, and combatants[4] and military objectives on the other. Attacks may only be directed against the latter. Secondly, the principle of proportionality prohibits attacks that are expected to cause incidental loss of life or injury to civilians or damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated. Thirdly, the principle of precautions in attack requires all parties to take all feasible measures to avoid and in any event to minimize incidental loss of civilian life, injury to civilians and damage to civilian objects.

IV. Context

14. The hostilities of 2014 erupted in the context of the protracted occupation of the West Bank, including East Jerusalem, and the Gaza Strip, and of the increasing number of rocket attacks on Israel. In the preceding months, there were few, if any, political prospects for reaching a solution to the conflict that would achieve peace and security for Palestinians and Israelis and realize the right to self-determination of the Palestinian people.

15. The blockade of Gaza by Israel, fully implemented since 2007 and described by the Secretary-General as "a continuing collective penalty against the population in Gaza" (A/HRC/28/45, para. 70), was strangling the economy in Gaza and imposed severe restrictions on the rights of the Palestinians. Two previous rounds of hostilities in the Strip since 2008 had not only led to loss of life and injury but also weakened an already fragile infrastructure. Palestinians have demonstrated extraordinary resilience in recent years, living in an environment scarred by physical destruction and psychological trauma. In the West Bank, including East Jerusalem, settlement-related activities and settler violence continued to be at the core of most of the human rights violations against Palestinians. In the absence of any progress on the political front, the risk of a flare-up of the situation was evident.

16. In the meantime, threats to the security of Israel remained all too real. Palestinian armed groups increasingly launched rockets during June and July 2014. The discovery of tunnels leading into Israel added to the sense of insecurity. According to one witness, residents of her kibbutz experienced regular panic attacks after the discovery of a tunnel in March 2014 and the explosion of an alleged tunnel exit on 8 July. Several other infiltration attempts were thwarted by the army during July and August.

17. The events of summer 2014 were preceded by an agreement, reached on 23 April 2014 between the Palestinian Liberation Organization and Hamas, which sought to end Palestinian divisions. On 2 June 2014, President Abbas declared the formation of a Government of national consensus. The Government had yet to assume its full responsibilities in Gaza when active hostilities broke out in the Strip in July 2014, thereby leaving Hamas exercising government-like functions, as had been the case since June 2007.

18. On 12 June 2014, three Israeli teenagers were kidnapped and brutally murdered in the West Bank. In response, Israel launched an extensive search and arrest operation, which lasted until their bodies were found, on 30 June. On 2 July, a 16-year-old Palestinian

[4] For the purposes of distinction, the term "combatants" includes members of the armed forces and of organized armed groups with a continuous combat function.

teenager from East Jerusalem was viciously murdered – burned alive – and his body discovered in West Jerusalem in what appeared to be an act of revenge for the murdered Israeli teenagers. Tensions in the West Bank, including East Jerusalem, ran high, and were further fuelled by a rise in extreme anti-Palestinian rhetoric. Widespread protests and violent clashes ensued between Palestinians and the Israel Defense Forces.

19. On 7 July 2014, the Israel Defense Forces commenced operation "Protective Edge" in the Gaza Strip, with the stated objective of stopping the rocket attacks by Hamas and destroying its capabilities to conduct operations against Israel. After an initial phase focused on airstrikes, on 17 July 2014, Israel launched a ground operation, which it declared sought to degrade "terror organisations' military infrastructure, and [... neutralize] their network of cross-border assault tunnels".[5] A third phase began on 5 August, and was characterized by alternating ceasefires and ongoing air strikes. The operation concluded on 26 August, when both Israel and Palestinian armed groups adhered to an unconditional ceasefire.

V. Principal findings and conclusions

20. Palestinians and Israelis were profoundly shaken by the events of the summer of 2014. In Gaza, in particular, the scale of the devastation was unprecedented. The death toll alone speaks volumes: 2,251 Palestinians were killed, including 1,462 Palestinian civilians, of whom 299 women and 551 children;[6] and 11,231 Palestinians, including 3,540 women and 3,436 children, were injured (A/HRC/28/80/Add.1, para. 24), of whom 10 per cent suffered permanent disability as a result. While the casualty figures gathered by the United Nations, Israel, the State of Palestine and non-governmental organizations differ, regardless of the exact proportion of civilians to combatants, the high incidence of loss of human life and injury in Gaza is heartbreaking.

21. The death of six civilians in Israel and 67 soldiers and the injury of up to 1,600 others were also the tragic result of the hostilities. According to official Israeli sources, rockets and mortars hit civilian buildings and infrastructure, including schools and houses, causing direct damage to civilian property amounting to almost $25 million.[7] The hostilities caused immense distress and disruption to the lives of Israeli civilians, especially those living in the southern regions. In addition to the constant threat of rocket and mortar attacks, the Israelis interviewed by the commission expressed particular anxiety about the new threat of assaults from tunnels penetrating into Israel. One Israeli woman said that "the tunnels are scarier than the rockets because there's no chance of being warned". The sense of panic among many Israelis was exacerbated by the short, often insufficient, time to conduct effective emergency procedures.

22. In Gaza, as Palestinians struggled to find ways to save their own lives and those of their families, they were confronted with intense attacks, with no way of knowing which locations would be hit and which might be considered safe. People began to move from one place to another, only to encounter attacks in the new neighbourhood, and they would have to move on. Closed into the Strip, with no possibility to exit at times, 44 per cent of Gaza

[5] Israel Ministry of Foreign Affairs, "2014 Gaza Conflict, Israel's Objectives and Phases of the 2014 Gaza Conflict" (available at http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx), p. 3.

[6] Data compiled by the OCHA Protection Cluster, 31 May 2015. For its methodology, see A/HRC/28/80/Add.1, para. 24, footnote 43.

[7] Israel Ministry of Foreign Affairs (see footnote 5), "Hamas' Violations of the Law", p. 4.

was either a no-go area or the object of evacuation warnings.[8] These terrifying circumstances created a sense of entrapment, of having "no safe place" to go.

23. Alongside the toll on civilian lives, there was enormous destruction of civilian infrastructure in Gaza: 18,000 housing units were destroyed in whole or in part;[9] much of the electricity network and of the water and sanitation infrastructure were incapacitated; and 73 medical facilities and many ambulances were damaged.[10] Many Palestinians were uprooted from their homes or temporary shelters multiple times; at the height of the hostilities, the number of internally displaced persons reached 500,000, or 28 per cent of the population. The effects of this devastation had a severe impact on the human rights of Palestinians in Gaza that will be felt for generations to come. The West Bank, including East Jerusalem, witnessed a period of heightened tensions and widespread human rights violations, including the fundamental right to life, which were overshadowed by the tragic events in Gaza.

24. The impact of the hostilities in Gaza cannot be assessed separately from the blockade imposed by Israel. The blockade and the military operation have led to a protection crisis and chronic, widespread and systematic violations of human rights, first and foremost the rights to life and to security, but also to health, housing, education and many others. According to international human rights law, Israel has obligations in relation to these rights and must take concrete steps towards their full realization. In that context, while fully aware of the need for Israel to address its security concerns, the commission believes that the Gaza Reconstruction Mechanism, put in place with the assistance of the United Nations to accelerate efforts to rebuild destroyed houses and infrastructure, is not a substitute for a full and immediate lifting of the blockade.

25. Palestinian and Israeli children were savagely affected by the events. Children on both sides suffered from bed-wetting, shaking at night, clinging to parents, nightmares and increased levels of aggressiveness.[11] In addition, according to the United Nations Children's Fund, in Gaza, more than 1,500 children were orphaned.[12] Anas "Bader" Qdeih, aged 7, was seen pleading for help from people fleeing Khuza'a while holding his intestines, which were coming out of his abdomen, "I don't want to die. Don't leave me." He died soon afterwards, after his medical evacuation was delayed.

A. Gaza Strip and Israel

26. In the section below, the commission summarizes its main findings and conclusions, emphasizing the key characteristics of the hostilities of 2014. It focuses on areas that reflect new patterns, notably attacks by Israel on residential buildings resulting in the death of entire families; Israel's ground operations, which levelled urban neighbourhoods; and violations by Palestinian armed groups and authorities in Gaza, including their reliance on attack tunnels. Other incidents – namely, attacks by Israel on United Nations shelters,

[8] Office for the Coordination of Humanitarian Affairs (OCHA), Occupied Palestinian Territory, Gaza Emergency Situation Report, 22 July 2014, p. 1.

[9] OCHA, Gaza Initial Rapid Assessment, 27 August 2014, p. 4.

[10] Health Cluster, Gaza Strip: Joint Health Sector Assessment Report, September 2014, available at http://reliefweb.int/sites/reliefweb.int/files/resources/Joint_Health_Sector_Assessment_Report_Gaza_Sept_2014.pdf.

[11] Child Protection Working Group, Child Protection Rapid Assessment Report, October 2014 (available at http://cpwg.net/wp-content/uploads/sites/2/2015/03/Child-Protection-Rapid-Assessment--Gaza_2014.pdf).

[12] United Nations Children's Fund, State of Palestine, Humanitarian Situation Report, 23 October 2014, p. 1.

medical facilities, ambulances, and other critical infrastructure – are considered less thoroughly, because these patterns have been a recurring reality in this and prior conflicts.

1. Rocket, mortar and tunnel attacks against locations in Israel

(a) Rocket and mortar attacks

27. Between 7 July and 26 August 2014, Palestinian armed groups fired 4,881 rockets and 1,753 mortars towards Israel, killing six civilians and injuring as many as 1,600 people, including 270 children. A mother from Israel described the situation experienced: "We have 45 seconds to run. You just have to wait and see if it's going to fall on you."

28. Owing to the lack of cooperation by Israel and its denial of access to its territory, the commission faced difficulties in identifying victims who had been injured in rocket attacks and was unable to examine individual cases in detail. The commission was, however, able to speak with witnesses and victims of a number of mortar attacks, the cause of the majority of Israeli civilian deaths.

29. On 22 August 2014, Daniel Tregerman, aged 4, was killed in his home at Kibbutz Nahal Oz, about 2 km from Gaza. While he was playing, a siren sounded, followed by an explosion three seconds later, when a mortar hit the family car and shrapnel struck Daniel. Given the short time, he had been unable to reach the protected room with the rest of his family. In another incident, on 26 August, Ze'ev Etzion and Shahar Melamed were killed by a mortar. Gad Yarkoni suffered injuries to his legs, which were later amputated. He informed the commission that the attack occurred as the three men were repairing electricity lines damaged by Palestinian projectiles in Kibbutz Nirim. The Al-Qassam Brigades announced that they had targeted Kibbutz Nirim and various other communities with 107 mm mortars on the day of the attack.[13]

30. Palestinian armed groups released statements indicating that they intended to attack Israeli civilians and population centres in Israel. In some instances, Palestinian armed groups in Gaza reportedly attempted to warn civilians in Israel of imminent attacks. For instance, on 20 August 2014, the Al-Qassam Brigades warned communities near Gaza to avoid returning home or to remain inside shelters.[14]

31. While some Palestinian armed groups made efforts to direct projectiles, especially mortars, at military objectives, in other cases they targeted villages near Gaza. The majority of projectiles fired by Palestinian armed groups were rockets without guidance systems so they could not be directed at specific military objectives. Many of the rockets were launched in the direction of major cities, including Jerusalem, Tel Aviv and Ashkelon, and one landed in the vicinity of Ben Gurion airport.

(b) Tunnels

32. The Israel Defense Forces found 32 tunnels, 14 of which extended beyond the Green Line into Israel.[15] The discovery of the tunnels and their use by Palestinian armed groups during the hostilities caused great anxiety among Israelis fearing that the tunnels might be used to attack civilians. One witness recalled, "When it's quiet, we are even more afraid

[13] https://twitter.com/qassam_arabic1/status/504191347684048898 (in Arabic). See also "Kibbutz member killed by mortar shell laid to rest", *Times of Israel*, 28 August 2014, and "After Operation Protective Edge, day 1", Haaretz, 27 August 2014.

[14] Al-Qassam, Press Release of Abu Obeida, Al-Qassam spokesperson, 20 August 2014.

[15] Israel Defense Forces, "Operation Protective Edge by the Numbers", 5 August 2014.

because we don't know what things can come from the ground. Since April, everyone was afraid and uncomfortable about the tunnels."

33. The use of rockets in the possession of Palestinian armed groups, indiscriminate in nature, and any targeted mortar attack against civilians constitute violations of international humanitarian law, in particular of the fundamental principle of distinction, which may amount to a war crime. The intent of some Palestinian armed groups to direct attacks against civilians is demonstrated by statements indicating that their intended targets were civilians or large population centres in Israel. While certain Palestinian armed actors cited the limits of their military arsenals as a reason for failing to attack military targets precisely, the military capacity of a party to the conflict is irrelevant to its obligation to respect the prohibition against indiscriminate attacks.

34. The absence of any possible military advantage resulting from rockets that cannot be directed at a military objective, coupled with statements by Palestinian armed groups, strongly suggest that the primary purpose of the rocket attacks was to spread terror among the civilian population, in violation of international humanitarian law.

2. Air strikes on residential buildings in Gaza

35. During the 51-day operation, the Israel Defense Forces carried out more than 6,000 air strikes in Gaza,[16] many of which hit residential buildings. The Office for the Coordination of Humanitarian Affairs found that at least 142 Palestinian families had three or more members killed in the same incident, amounting to a total of 742 fatalities.[17] Tawfik Abu Jama, a Gazan father of eight, recalled: "I was sitting with my family at the table, ready to break the fast. Suddenly we were sucked into the ground. Later that evening, I woke up in the hospital and was told my wife and children had died".

36. The commission investigated 15 cases of strikes on residential buildings across Gaza, in which a total of 216 people were killed, including 115 children and 50 women. On the basis of all available information, including research by non-governmental organizations,[18] it identified patterns of strikes by Israeli forces on residential buildings and analysed the applicable law in relation to individual incidents.

37. The commission found that the fact that precision-guided weapons were used in all cases indicates that they were directed against specific targets and resulted in the total or partial destruction of entire buildings. This finding is corroborated by satellite imagery analysis.[19] Many of the incidents took place in the evening or at dawn, when families gathered for *iftar* and *suhhur*, the Ramadan meals, or at night, when people were asleep. The timing of the attacks increased the likelihood that many people, often entire families, would be at home. Attacking residential buildings rendered women particularly vulnerable to death and injury.[20]

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[16] Israel Ministry of Foreign Affairs, IDF Conduct of Operations during the 2014 Gaza Conflict (available at http://mfa.gov.il/ProtectiveEdge/Documents/IDFConduct.pdf), p. 38.

[17] OCHA, Fragmented Lives: Humanitarian Overview 2014, March 2015, p. 4.

[18] See also B'Tselem, "Black Flag: The legal and moral implications of the policy of attacking residential buildings in the Gaza Strip", January 2015, p. 46, and Amnesty International, "Families Under the Rubble – Israeli Attacks on Inhabited Homes", 5 November 2014, p. 42.

[19] United Nations Institute for Training and Research (UNITAR), Impact of the 2014 Conflict in the Gaza Strip – UNOSAT Satellite Derived Geospatial Analysis, 2014.

[20] The percentage of women killed was significantly higher in 2014 (20.2 per cent of civilians) than during the conflict in 2009 (14 per cent); see B'Tselem, "B'Tselem publishes complete fatality figures from operation cast lead", press release, 9 September 2009.

38. In six of the cases examined, and in most cases reported on by non-governmental organizations, there is little or no information available to explain why residential buildings, which are *prima facie* civilian objects immune from attack, were considered to be legitimate military objectives. In relation to each attack on residential buildings that resulted in significant destruction and civilian deaths or injuries, the onus is on Israel to explain the factual elements that rendered the houses or the person(s) present inside a military target. Israel should provide specific information on the effective contribution of a given house or inhabitant to military action and the clear advantage to be gained by the attack. Should a strike directly and intentionally target a house in the absence of a specific military objective, this would amount to a violation of the principle of distinction.[21] It may also constitute a direct attack against civilian objects or civilians, a war crime under international criminal law.[22]

39. Although the commission found indications of possible military objectives in the remaining nine cases examined, it is not in a position to determine whether they actually motivated the attacks in question. It appears that the potential targets were mostly individuals who were or who could have been present in the building at the time it was hit, presumably on account of their alleged links to the police, Hamas or an armed group. In that regard, international law provides that persons may be targeted only if they participate directly in hostilities or are members of organized armed groups with a continuous combat function.

40. With regard to proportionality, given the circumstances, a reasonable commander would have been aware that these attacks would be likely to result in a large number of civilian casualties and the complete or partial destruction of the building. Such circumstances differ from case to case, and include the residential nature of the targeted buildings; their location in densely populated areas; the timing of the attacks; and the frequent use of large bombs that were apparently meant to cause extensive damage. Given the absence of information suggesting that the anticipated military advantage at the time of the attack was such that the expected civilian casualties and damage to the targeted and surrounding buildings were not excessive, there are strong indications that these attacks could be disproportionate, and therefore amount to a war crime.[23]

41. Regarding precautions, the Israel Defense Forces stated repeatedly that its measures were more stringent than those required by international humanitarian law.[24] In many incidents, however, the weapons used, the timing of attacks, and the fact that the targets were located in densely populated areas indicate that the Israel Defense Forces may not have done everything feasible to avoid or limit civilian casualties.

42. Warnings are one means of precaution. International humanitarian law requires that "effective advance warning be given of attacks which may affect the civilian population, unless circumstances do not permit."[25] The fact that many residential buildings were destroyed without causing deaths suggests that, where specific warnings were conveyed via telephone or text messages, they may have been effective in minimizing civilian casualties. In other cases, the Israel Defense Forces used so-called "roof-knock" warnings, strikes by small missiles before the real strike. In a number of incidents examined, the concerned persons either did not understand that their house had been the subject of a "roof-knock", or

[21] Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), arts. 51 and 52.1.

[22] Rome Statute of the International Criminal Court, art. 8.

[23] Ibid.

[24] IDF MAG Corps, "Aerial Strikes against Terrorists: Some Legal Aspects".

[25] Protocol I, art. 57, para. 3.

the time given for evacuation between the warning and the actual strike was insufficient. In one case examined by the commission, a 22-member family, including nine children, were given just a few minutes to evacuate their home after a "roof knock" in the early hours of the morning, while they were asleep; 19 of the 22 people present in the house died. The commission concluded that "roof knocks" cannot be considered an effective warning given the confusion they often cause to building residents and the short time allowed to evacuate before the actual strike.

43. The limited effectiveness of the above-mentioned precautionary measures must have become abundantly clear in the early days of the operation, given that many buildings were destroyed, together with their inhabitants. The apparent lack of steps to re-examine these measures in the light of the mounting civilian toll suggests that Israel did not comply with its obligation to take all feasible precautions before the attacks.

44. Furthermore, the large number of targeted attacks against residential buildings and the fact that such attacks continued throughout the operation, even after the dire impact of these attacks on civilians and civilian objects became apparent, raise concern that the strikes may have constituted military tactics reflective of a broader policy, approved at least tacitly by decision-makers at the highest levels of the Government of Israel.[26]

45. The commission also considered air strikes against *prima facie* residential buildings that did not cause deaths because the buildings had been vacated. These included attacks against houses of senior political figures and high-ranking members of armed groups in their absence, and against three high-rise buildings in the last days of the conflict. Without precise information about the possible military use of these premises, the commission is unable to make a conclusive assessment regarding Israel's respect of the principle of distinction. These attacks raise concerns that Israel's interpretation of what constitutes a "military objective" may be broader than the definition provided for by international humanitarian law.[27]

3. Ground operations

46. With regard to operations by Israel, the commission investigated attacks in three neighbourhoods: in Shuja'iya (on 19, 20 and 30 July); in Khuza'a (from 20 July to 1 August); and in Rafah (from 1 to 3 August), large areas of which were levelled to the ground. After an assessment of all available information, the commission identified five key patterns with respect to the ground operations.

(a) Use of artillery and other explosive weapons in densely populated areas

47. Talal Al Helo, a man from Shuja'iya, recalled "I am not a fighter, I am a civilian and I care about the well-being of my family. The attacks were everywhere. Everything was coming under attack, the roads and buildings; there was no safe haven in Shuja'iya. We walked as the missiles kept arriving. We saw bodies of people in the streets. We came across the [...] bodies of young and old people, women and children."

48. During the ground operations, the Israel Defense Forces used explosive weapons extensively in densely populated areas of Gaza. These weapons included artillery and tank shells, mortars and air-dropped high-explosive munitions. The Forces reported that, during

[26] See the judgement of the International Criminal Tribunal for the Former Yugoslavia on *Kupreškić et al* of 14 January 2000; Amnesty International, "Families Under the Rubble" (see footnote 19), pp. 6 and 42; and FIDH, "Trapped and Punished: The Gaza Civilian Population under Operation Protective Edge", October 2014, pp. 29–30.

[27] See Protocol I, art. 52, para. 2.

the operation, 5,000 tons of munitions were supplied,[28] and that 14,500 tank shells and approximately 35,000 artillery shells had been fired.[29] One non-governmental organization reported a 533 per cent-increase in highly explosive artillery shells used in 2014 in comparison to the hostilities in 2008 and 2009.[30] Many explosive weapons, in particular artillery and mortars, have a wide-area effect, meaning that anyone or anything within a given area is likely to be killed, injured or damaged, owing to the scale of their blast and their imprecise nature. While not illegal as such, the use of these weapons in densely populated areas poses a high risk to the civilian population.[31]

49. According to official Israeli sources, artillery was used in urban areas only on an exceptional basis, when these areas were known to have been largely evacuated.[32] The incidents examined by the commission, however, demonstrate that artillery and other heavy weapons were widely used in residential neighbourhoods, resulting in a large number of casualties and extensive destruction.[33] For instance, in Shuja'iya, the sheer number of 155 mm shells fired, the reported dropping of 120 one-ton bombs in a short amount of time in a densely populated area,[34] and the use of a creeping artillery barrage raise questions with regard to the respect by the Israel Defense Forces of the rules of distinction, precaution and proportionality.

50. The extensive use by the Israel Defense Forces of explosive weapons with wide-area effects, and their probable indiscriminate effects in the built-up neighbourhoods of Gaza, are highly likely to constitute a violation of the prohibition of indiscriminate attacks.[35] Such use may, depending on the circumstances, qualify as a direct attack against civilians,[36] and may therefore amount to a war crime.[37]

51. In addition, the fact that the Israel Defense Forces did not modify the manner in which they conducted their operations after initial episodes of shelling resulted in a large number of civilian deaths indicates that their policies governing the use of artillery in densely populated areas may not be in conformity with international humanitarian law.

52. The commission examined several additional incidents, including attacks on shelters, hospitals and critical infrastructure, in which artillery was used. The use of weapons with wide-area effects against targets in the vicinity of specifically protected objects (such as medical facilities and shelters) is highly likely to constitute a violation of the prohibition of indiscriminate attacks. Depending on the circumstances, indiscriminate attacks may qualify as a direct attack against civilians,[38] and may therefore amount to a war crime.[39]

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[28] Israel Defence Forces, Omer Shalit, Technological and Logistics Directorate: "Faster and more efficient: this is how munition is supplied to the fighting forces", 13 August 2014, available at www.idf.il/1133-21100-HE/IDFGDover.aspx (in Hebrew).

[29] "16 Facts about Operation Cast Lead", *Bayabasha*, Ground Forces Magazine, No. 29, October 2014 (available at http://mazi.idf.il/6216-he/IGF.aspx) (in Hebrew), p. 47.

[30] Action on Armed Violence, "Under fire: Israel's artillery policies scrutinised", December 2014, p. 14.

[31] See also OCHA Policy, "Protecting civilians from the use of explosive weapons in populated areas".

[32] Israel Ministry of Foreign Affairs, IDF Conduct of Operations (see footnote 17), p. 49.

[33] Action on Armed Violence, "Under fire" (see footnote 30), p. 12.

[34] NRG News, Senior officer Yohai Ofer "Shuja'iya is under control, we have damaged an entire Hamas network", 23 July 2014, available at www.nrg.co.il/online/1/ART2/599/869.html (in Hebrew).

[35] Protocol I, art. 51, para. 4.

[36] International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Galic*, case No. IT-98-29-T, judgement, 5 December 2003, para. 57.

[37] Rome Statute, art. 8.

[38] *Prosecutor v. Galic* (see footnote 36), para. 57.

[39] Rome Statute, art. 8.

(b) Destruction

53. Information gathered by the commission, including from witness accounts, United Nations reports, video and photographic materials, observations by the United Nations Institute for Training and Research Operational Satellite Applications Programme (UNITAR-UNOSAT)[40] and anecdotal testimonies by soldiers of the Israel Defense Forces, indicates that destruction by artillery fire, air strikes and bulldozers may have been adopted as a tactic of war. Some destruction may arguably be the result of the legitimate attempts of the Israel Defense Forces to dismantle tunnels and to protect its soldiers. The concentration of destruction in localities close to the Green Line, in some areas amounting to 100 per cent, and the systematic way in which these areas were flattened one after the other, however, raise concerns that such extensive destruction was not required by imperative military necessity.[41] If confirmed, this would constitute a grave breach of article 147 of the Fourth Geneva Convention, which is a war crime.

(c) Warnings and the continued protected status of civilians

54. In many cases during the ground operations, the Israel Defense Forces warned the population of impending attacks by means of leaflets, loudspeaker announcements, telephone calls, text messages and radio announcements.[42] In many instances, however, inhabitants did not leave their homes.[43] For instance, the Office for the Coordination of Humanitarian Affairs reported on 20 July that the majority of the 92,000 inhabitants of Shuja'iya had remained in their neighbourhood despite repeated warnings to evacuate.[44] Witnesses pointed to several reasons for staying, including not knowing in which direction to go, given that intense shelling and air strikes were under way in many parts of Gaza; lack of clarity of and unclear time frames indicated by the warnings; the fact that many places considered safe were already overcrowded; and the poor conditions in shelters, which themselves came under attack.

55. Statements by officials of the Israel Defense Forces indicated that, in some cases, warnings to evacuate were meant to create "sterile combat zones", and the people remaining in the area would no longer be considered civilians and thus benefit from the protection afforded by their civilian status. For example, the Head of the Doctrine Desk at the Infantry Corps Headquarters, Major Amitai Karanik, reportedly stated: "We try to create a situation whereby the area where we are fighting is sterile, so any person seen there is suspected of engaging in terrorist activity. At the same time, we make the utmost effort to remove the population, whether this means dropping flyers or shelling [.] We don't want to confuse the troops [...] In peacetime security, soldiers stand facing a civilian population, but in wartime, there is no civilian population, just an enemy."[45] The commission is aware of the assertions made by the Israel Ministry of Foreign Affairs that "although Hamas authorities actively encouraged civilians to ignore the IDF's warnings and refrain from evacuating, the IDF did not regard civilians who heeded such advice as voluntary human shields and thus legitimate targets for attack. Nor did the IDF discount such civilians for purposes of its proportionality analyses."[46] It is the view articulated by Major Karanik that appears, however, to have prevailed in at least two of the neighbourhoods examined by the

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[40] UNITAR, Impact of the 2014 Conflict in the Gaza Strip (see footnote 20), p. 8.

[41] Regulations annexed to the Hague Convention IV of 1907, art. 23; Fourth Geneva Convention, art. 53.

[42] Israel Ministry of Foreign Affairs, IDF Conduct of Operations (see footnote 17), pp. 30–37.

[43] Ibid.

[44] OCHA, Gaza Emergency Situation Report (see footnote 8), p. 2.

[45] *Bayahsha*, Ground Forces Magazine, October 2014, No. 29, p. 62 (unofficial translation).

[46] Israel Ministry of Foreign Affairs, IDF Conduct of Operations (see footnote 17), p. 13.

commission and to have had implications for the way in which Israeli soldiers on the ground viewed those who remained. On the basis of soldier testimony, one non-governmental organization concluded that "the soldiers were briefed by their commanders to fire at every person they identified in a combat zone, since the working assumption was that every person in the field was an enemy."[47]

56. The commission recognizes that the general warnings issued by the Israel Defense Forces saved lives. At the same time, these warnings were often used in a context where people fleeing were unable to identify a safe place to go owing to the unpredictability of many attacks over a lengthy period of time. Most importantly, inferring that anyone remaining in an area that has been the object of a warning is an enemy or a person engaging in "terrorist activity", or issuing instructions to this effect, contributes to creating an environment conducive to attacks against civilians. Those civilians choosing not to heed a warning do not lose the protection granted by their status. The only way in which civilians lose their protection from attack is by directly participating in the hostilities.[48] Merely issuing a warning does not absolve the Israel Defense Forces of their legal obligations to protect civilian life.

(d) Protection of civilians, force protection and the "Hannibal directive"

57. An examination of actions by the Israel Defense Forces in Shuja'iya in July and Rafah on 1 August indicates that the protection of Israeli soldiers significantly influenced the conduct of the Israel Defense Forces in these operations, at times overriding any concern for minimizing civilian casualties. While force protection is a legitimate objective, the commission has the distinct impression that, when soldiers' lives were at stake or there was a risk of capture, the Forces disregarded basic principles on the conduct of hostilities. One of the witnesses recalled that "every time an Israeli soldier dies or is kidnapped, we feel the consequences". In Rafah, following the killing of two Israeli soldiers and the apparent capture of one, who was later found to be dead, entire areas were closed off, in particular through the use of shelling and air strikes, presumably to prevent the captors from leaving the area with the captive soldier. Reports indicate that a procedure, known as the "Hannibal directive", was activated in Rafah and possibly in Shuja'iya, where there were similar fears that a soldier had been captured. It reportedly gives considerable leeway to Israeli commanders in deciding how to prevent their soldiers from being captured by armed groups,[49] and is widely perceived as having led to intensified shelling. In Rafah, every moving vehicle or person became a potential target, with the most intensive fire reported over the first four hours.

58. The Government of Israel has stated that the requirement to respect the principle of proportionality continues to apply whenever the Hannibal directive is invoked,[50] and some have argued that the proportionality test may take into account strategic considerations in determining the military advantage. The commission emphasizes that policy considerations and remote strategic objectives informed by political goals – such as denying armed groups the leverage they could obtain over Israel in negotiations for the release of a captured soldier – are not valid considerations in conducting the proportionality analysis required under international humanitarian law. The commission believes that the military culture created by such policy priorities may have been a factor contributing to the decision to unleash massive firepower in Rafah and Shuja'iya, in utter disregard of its devastating impact on the civilian population. Moreover, applying this protocol in the context of a

[47] Breaking the Silence, "This is how we fought in Gaza", May 2015, p. 18.
[48] Protocol I, art. 51, para. 3, and art. 57.
[49] Breaking the Silence, "This is how we fought in Gaza" (see footnote 49).
[50] Israel Ministry of Foreign Affairs, IDF Conduct of Operations (see footnote 17), p. 44.

densely populated environment through the use of heavy weaponry predictably leads to violations of the principles of distinction and proportionality.

(e) Targeting of civilians

59. The commission examined several cases in which the people or groups of people targeted were civilians, at times children, who were not directly participating in the hostilities and did not represent any threat to the Israeli soldiers present in the area. For instance, Salem Shamaly, whose death was recorded on video, was shot several times while looking for a relative during a humanitarian pause, even after he had been felled by the first shot (A/HRC/28/80/Add.1, para. 43). The commission examined two other incidents in which civilians allegedly carrying white flags were targeted by soldiers in Khuza'a. The first case pertained to a large group of people, including children, who were attacked in front of a clinic while attempting to leave the village holding white flags. In the second case, a man in a house carrying a white flag was shot at point-blank range in front of some 30 other people, including women, children and elderly persons, who had sought shelter in the house.

60. Directing attacks against civilians constitutes a violation of the principle of distinction and may amount to a war crime. These acts may also constitute wilful killings. Such acts are also a violation of the right to life, as guaranteed by article 6 of the International Covenant on Civil and Political Rights.

4. Impact on the population in Gaza of the conduct of Palestinian armed groups

61. The commission examined the conduct of Palestinian armed groups in a densely populated environment, and what measures, if any, were taken by the authorities in Gaza to protect civilians in Gaza from the effects of the attacks conducted by Israel.

62. The commission regrets that it was unable to verify allegations made by Israel on the use of civilian buildings by Palestinian armed groups[51] owing to the denial by Israel of access to Gaza; fears by Palestinian witnesses of reprisal by armed groups and local authorities, in particular when providing information remotely; and challenges faced by Palestinian human rights organizations in documenting alleged violations by Palestinian armed groups.

(a) Conducting military operations from within or near densely populated areas

63. Palestinian armed groups allegedly often operated from densely populated neighbourhoods, including by firing rockets, mortars and other weapons from built-up areas. In addition, they were alleged to have frequently placed command and control centres and firing positions in residential buildings and to have stockpiled weapons and located tunnel entrances in *prima facie* civilian buildings. They also reportedly conducted military operations within or in close proximity to sites benefiting from specific protection under international humanitarian law, such as hospitals, shelters and places dedicated to religion and education, including within or in the vicinity of schools operated by the United Nations Relief and Works Agency for Palestine Refugees in the Near East. The Secretary-General expressed his dismay that Palestinian militant groups would put United Nations schools at risk by using them to hide their arms. "The three schools in which weaponry was found were empty at the time and were not being used as shelters. However, the fact that they were used by those involved in the fighting to store their weaponry and, in two cases, probably to fire from is unacceptable" (S/2015/286, p. 3). Israel made specific allegations

[51] Israel Ministry of Foreign Affairs (see footnote 5), "Hamas' Violations of the Law".

with regard to the use of schools, mosques and hospitals and the areas in their immediate vicinity for military purposes. By firing rockets from densely populated areas, Palestinian armed groups also put Gazans in danger; for example, on 28 July 2014, 13 civilians, including 11 children, were killed in Al-Shati camp when a rocket appears to have fallen short of its target.

64. The commission recognizes that the obligation to avoid locating military objectives within densely populated areas is not absolute. The small size of Gaza and its population density make it difficult for armed groups to always comply with this requirement. While the commission was unable to verify independently the specific incidents alleged by Israel, the frequency of reports of Palestinian armed groups carrying out military operations in the immediate vicinity of civilian objects and specially protected objects suggests that such conduct could have been avoided on a number of occasions. In those instances, Palestinian armed groups may not have complied, to the maximum extent feasible, with their legal obligations. In cases where their goal may have been to use the presence of civilians to protect military assets from attack, this would constitute a violation of the customary law prohibition against the use of human shields.[52] With regard to the alleged use of medical facilities and ambulances for military purposes, if verified, and if the buildings or ambulances bore distinctive emblems of the Geneva Conventions, such as the Red Crescent, such actions would amount to an improper use of a distinctive emblem, in violation of customary international humanitarian law.

65. Regardless of the case-by-case legality of the actions of Palestinian armed groups, the military use of civilian buildings and densely populated areas from which to conduct military operations increases the risk to the civilian population and civilian objects. The questionable conduct of these armed groups does not, however, modify Israel's own obligations to abide by international law.

(b) Measures to facilitate the removal of the civilian population from the vicinity of military objectives

66. The authorities in Gaza stated that they had taken measures to facilitate evacuation from areas most affected by the hostilities, including by setting up shelters for internally displaced persons and conducting more than 4,450 evacuation missions in Beit Hanoun, Shuja'iya and Khuza'a. Nevertheless, the commission is concerned that, in some cases, the authorities in Gaza reportedly encouraged residents not to heed the warnings given by the Israel Defense Forces.[53] If confirmed, and depending on the circumstances, such declarations may indicate that the authorities in Gaza did not take all the precautions necessary to protect the civilian population under their control as required by international humanitarian law.

(c) Executions of suspected "collaborators"

67. The commission found that 21 alleged "collaborators" were executed between 5 and 22 August 2014. Sixteen of them were taken from Al-Katiba prison where they had been held in the custody of the local authorities in Gaza and shot by firing squad.[54] The Al-Qassam Brigades claimed responsibility for the executions, in some cases claiming that the persons executed had been "found guilty of giving information on the whereabouts of

[52] Protocol I, art. 51, para. 7.

[53] Statement by Hamas spokesperson Mushir al-Masri, 16 July 2014, available at www.youtube.com/watch?v=ks_nlgjfPWM (in Arabic).

[54] Amnesty International, "Strangling necks": Abductions, torture and summary killings of Palestinians by Hamas forces during the 2014 Gaza/Israel conflict", 26 May 2015.

fighters and civilian houses".[55] The local authorities in Gaza informed the commission that the executions had been carried out by Palestinian factions operating in secrecy, without instructions from the authorities. They have purportedly created a body to investigate allegations of extrajudicial killings. The Government of the State of Palestine likewise pledged to investigate such cases once it regains control over Gaza.

68. Owing to the link to the armed conflict, these extrajudicial executions constitute a violation of article 3 common to the 1949 Geneva Conventions, and therefore amount to a war crime. In addition, the commission found that the executions appear to have been carried out with the knowledge of the local authorities in Gaza, in violation of their human rights obligation to protect the right to life and security of those in their custody. Furthermore, the commission is concerned that the families of those executed have been stigmatized by being labelled the relatives of "collaborators".

B. West Bank, including East Jerusalem

69. The period of June to September 2014 was marked by heightened tensions in the West Bank, including East Jerusalem. Israeli security forces allegedly conducted more than 1,400 raids on Palestinian homes and other civilian buildings, often at night, and reportedly arrested more than 2,050 Palestinians, including children (see A/HRC/28/80/Add.1).[56] As at the end of August 2014, 473 persons were said to be held in administrative detention.[57] Cruel, inhuman and degrading treatment, including of children, was widely reported.[58] Israel also imposed severe restrictions on the movement of Palestinians within and out of the West Bank, as well as on their access to Al-Aqsa Mosque.[59] These measures prevented Palestinians from having access to services, markets, education and workplaces, and generated significant economic losses.[60] In addition, Israel resumed its practice of punitive home demolitions. Incidents of settler violence and settlement-related activity, including reportedly as a response to the abduction and killing of the three Israeli youths, were recorded.

70. There was also a stark rise in deaths and injuries of Palestinians by Israeli security forces. Between 12 June and 26 August 2014, 27 Palestinians, including five children, were allegedly killed and more than 3,100 Palestinians were injured by the Israeli security forces (A/HRC/28/80/Add.1, para. 10).[61] This figure reportedly rose to 36 Palestinians, including 11 children, by the end of September 2014.[62] The victims included Hashem Abu Maria, a well-known child rights activist who worked for the non-governmental organization Defence for Children International who was killed in circumstances where he presented no

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[55] See news reports (in Arabic) at http://tinyurl.com/psv72pw and www.ahdath.info/?p=11335 and http://tinyurl.com/ms2z7lk and http://tinyurl.com/ots3rqd.

[56] See also Military Court Watch, "Statistics – Palestinian 'security' prisoners in Israeli detention".

[57] B'Tselem, "Israel holding more than 470 Palestinians in administrative detention – highest number in 5 years", 7 October 2014.

[58] See also testimonies collected by Military Court Watch available at http://is.gd/yJmFA3.

[59] See B'Tselem, "Hebron District and its 680,000 residents under third day of closure: increasing reports of property damage in arrest raids", 17 June 2014; and OCHA, Monthly Report, June – August 2014.

[60] See B'Tselem, "Hebron District and its 680,000 residents under third day of closure" (see footnote 61).

[61] OCHA, Monthly Report, June – August 2014 (see footnote 59).

[62] Submission from Al-Dameer Association for Human Rights, Al-Haq, Al Mezan Center for Human Rights and the Palestinian Center for Human Rights. See B'Tselem, "Palestinians killed by Israeli security forces in the West Bank, after operation Cast Lead", 2015.

threat to the security forces. United Nations data indicate that the number of those killed within this period was equivalent to the total number of Palestinian fatalities in similar circumstances throughout 2013 (ibid.). These data further show that the large number of deaths and injuries was a direct result of the regular recourse to live ammunition by the Israeli security forces[63] and the apparent rising trend in the use of 0.22 inch calibre bullets in crowd-control situations. The increased use of live ammunition, combined with the spike in casualties, appears to reflect a change in policy guiding the law enforcement operations of the Israel Defense Forces in the West Bank.[64]

71. The commission is particularly concerned that the pervasive use of live ammunition inevitably raises the risk of death or serious injury. The use of firearms against those not posing a threat to life or serious injury constitutes a violation of the prohibition of the arbitrary deprivation of life,[65] and may, depending on the circumstances, amount to an act of wilful killing. The unjustified recourse to firearms by law enforcement officials may be considered a war crime when it takes place in the context of an international armed conflict, including a situation of military occupation, and that the person killed was a protected person.

VI. Accountability

72. The commission notes the steps taken by Israel to investigate alleged violations of the law of armed conflict by the Israel Defense Forces during operation "Protective Edge"[66] and towards bringing its system of investigations into compliance with international standards. Flaws remain, however, with respect to the State's adherence to international standards. Further significant changes are required to ensure that Israel adequately fulfils its duty to investigate, prosecute and hold perpetrators accountable for violations of international humanitarian law and international human rights law. One of the measures needed is to enhance the independence and impartiality of the Military Advocate General and to ensure the robust application of international humanitarian law in his decisions regarding criminal investigations. For example, the definition of "military objectives" has implications for both for the Military Advocate General's operational guidance of troops on the ground and his subsequent assessment of whether to refer a case for criminal investigation. Moreover, the investigations process followed by the Israel Defense Forces focuses on possible individual criminal responsibility at the level of the soldier on the battlefield. Even where the behaviour of soldiers and low-ranking officers during hostilities has come into question, however, this has rarely resulted in criminal investigations. At the policy level, the commission looks forward to reading the report of the State Comptroller's inquiry into the procedure of decision-making by the military and political echelons during operation "Protective Edge". The Comptroller's inquiry should be supplemented by mechanisms – including criminal proceedings[67] and disciplinary measures – that aim to hold to account individuals who may have played a role in wrongdoing. In addition, Palestinian victims face significant obstacles that impede their right to benefit from effective remedies, including reparations.

73. The commission concludes that investigations by Palestinian authorities are woefully inadequate, despite allegations of violations of international humanitarian law by

[63] OCHA, Monthly Report, June – August 2014 (see footnote 59).
[64] B'Tselem, "Military steps up use of 0.22 inch bullets against Palestinian stone-throwers", 18 January 2015.
[65] International Covenant on Civil and Political Rights, art. 6.
[66] Israel Ministry of Foreign Affairs (see footnote 5), p. 1.
[67] See Fourth Geneva Convention, art. 146.

Palestinian actors, leaving Israeli victims without an effective remedy. With respect to the local authorities in Gaza, no steps appear to have been taken to ensure effective investigations into actions by Palestinian armed groups, seemingly owing to a lack of political will. The Palestinian Authority claims that its failure to open investigations results from insufficient means to carry out investigations in a territory over which it has yet to re-establish unified control.

VII. Conclusions and recommendations

A. Concluding observations

74. **The commission was deeply moved by the immense suffering of Palestinian and Israeli victims, who have been subjected to repeated rounds of violence. The victims expressed their continued hope that their leaders and the international community would act more resolutely to address the root causes of the conflict so as to restore human rights, dignity, justice and security to all residents of the Occupied Palestinian Territory and Israel. In relation to this latest round of violence, which resulted in an unprecedented number of casualties, the commission was able to gather substantial information pointing to serious violations of international humanitarian law and international human rights law by Israel and by Palestinian armed groups. In some cases, these violations may amount to war crimes. The commission urges all those concerned to take immediate steps to ensure accountability, including the right to an effective remedy for victims.**

75. **With regard to Israel, the commission examined carefully the circumstances of each case, including the account given by the State, where available. Israel has, however, released insufficient information regarding the specific military objectives of its attacks. The commission recognizes the dilemma that Israel faces in releasing information that would disclose in detail the targets of military strikes, given that such information may be classified and jeopardize intelligence sources. Be that as it may, security considerations do not relieve the authorities of their obligations under international law. The onus remains on Israel to provide sufficient details on its targeting decisions to allow an independent assessment of the legality of the attacks conducted by the Israel Defense Forces and to assist victims in their quest for the truth.**

76. **The commission is concerned that impunity prevails across the board for violations of international humanitarian law and international human rights law allegedly committed by Israeli forces, whether it be in the context of active hostilities in Gaza or killings, torture and ill-treatment in the West Bank. Israel must break with its recent lamentable track record in holding wrongdoers accountable, not only as a means to secure justice for victims but also to ensure the necessary guarantees for non-repetition.**

77. **Questions arise regarding the role of senior officials who set military policy in several areas examined by the commission, such as in the attacks of the Israel Defense Forces on residential buildings, the use of artillery and other explosive weapons with wide-area effects in densely populated areas, the destruction of entire neighbourhoods in Gaza, and the regular resort to live ammunition by the Israel Defense Forces, notably in crowd-control situations, in the West Bank. In many cases, individual soldiers may have been following agreed military policy, but it may be that the policy itself violates the laws of war.**

78. The commission's investigations also raise the issue of why the Israeli authorities failed to revise their policies in Gaza and the West Bank during the period under review by the commission. Indeed, the fact that the political and military leadership did not change its course of action, despite considerable information regarding the massive degree of death and destruction in Gaza, raises questions about potential violations of international humanitarian law by these officials, which may amount to war crimes. Current accountability mechanisms may not be adequate to address this issue.

79. With regard to Palestinian armed groups, the commission has serious concerns with regard to the inherently indiscriminate nature of most of the projectiles directed towards Israel by these groups and to the targeting of civilians, which violate international humanitarian law and may amount to a war crime. The increased level of fear among Israeli civilians resulting from the use of tunnels was palpable. The commission also condemns the extrajudicial executions of alleged "collaborators", which amount to a war crime.

80. The Palestinian authorities have consistently failed to ensure that perpetrators of violations of international humanitarian law and international human rights law are brought to justice. The commission is concerned that continuing political divisions contribute significantly to the obstruction of justice for victims of violations by Palestinian armed groups. The absence of measures to initiate criminal proceedings against alleged perpetrators calls into question the stated determination of the Palestinian Authority to achieve accountability. In accordance with their legal obligations, the authorities must take urgent measures to rectify this long-standing impunity.

81. Comprehensive and effective accountability mechanisms for violations allegedly committed by Israel or Palestinian actors will be a key deciding factor of whether Palestinians and Israelis are to be spared yet another round of hostilities and spikes in violations of international law in the future.

B. Recommendations

82. The persistent lack of implementation of recommendations – made by previous commissions of inquiry, fact-finding missions, United Nations treaty bodies, special procedures and other United Nations bodies, in particular the Secretary-General and OHCHR – lies at the heart of the systematic recurrence of violations in Israel and the Occupied Palestinian Territory. Bearing in mind this wealth of guidance, the commission will not elaborate an exhaustive list of recommendations, which would repeat concerns registered by other bodies. Rather, it calls upon all duty bearers to implement fully all recommendations made by the above-mentioned bodies without delay in order to avert a crisis similar to that of summer 2014 in the future.

83. The commission calls upon all parties to fully respect international humanitarian law and international human rights law, including the main principles of distinction, proportionality and precaution, and to establish promptly credible, effective, transparent and independent accountability mechanisms. The right of all victims to an effective remedy, including full reparations, must be ensured without further delay. In this context, the parties should cooperate fully with the preliminary examination of the International Criminal Court and with any subsequent investigation that may be opened.

84. The commission also calls upon Israelis and Palestinians to demonstrate political leadership by both refraining from and taking active steps to prevent

statements that dehumanize the other side, incite hatred, and only serve to perpetuate a culture of violence.

85. **The commission calls upon the Government of Israel to conduct a thorough, transparent, objective and credible review of policies governing military operations and of law enforcement activities in the context of the occupation, as defined by political and military decision-makers, to ensure compliance with international humanitarian law and human rights law, specifically with regard to:**

(a) The use of explosive weapons with wide-area effects in densely populated areas, including in the vicinity of specifically protected objects;

(b) The definition of military objectives;

(c) The tactics of targeting residential buildings;

(d) The effectiveness of precautionary measures;

(e) The protection of civilians in the context of the application of the Hannibal directive;

(f) Ensuring that the principle of distinction is respected when active neighbourhoods are declared "sterile combat zones";

(g) The use of live ammunition in crowd-control situations.

The review should also examine mechanisms for continuous review of respect for international humanitarian law and human rights law during military operations and in the course of law enforcement activities in the context of the occupation.

86. **The commission further calls upon the Government of Israel:**

(a) To ensure that investigations comply with international human rights standards and that allegations of international crimes, where substantiated, are met with indictments, prosecutions and convictions, with sentences commensurate to the crime, and to take all measures necessary to ensure that such investigations will not be confined to individual soldiers alone, but will also encompass members of the political and military establishment, including at the senior level, where appropriate;

(b) To implement all the recommendations contained in the second report of the Turkel Commission, in particular recommendation No. 2 calling for the enactment of provisions that impose direct criminal liability on military commanders and civilian superiors for offenses committed by their subordinates, in line with the doctrine of command responsibility;

(c) To grant access to Israel and the Occupied Palestinian Territory for, and cooperate with, international human rights bodies and non-governmental organizations concerned with investigating alleged violations of international law by all duty bearers and any mechanisms established by the Human Rights Council to follow up on the present report;

(d) To address structural issues that fuel the conflict and have a negative impact on a wide range of human rights, including the right to self-determination; in particular, to lift, immediately and unconditionally, the blockade on Gaza; to cease all settlement-related activity, including the transfer of Israel's own population to the occupied territory; and to implement the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian Territory;

(e) To accede to the Rome Statute.

87. **The commission calls upon the State of Palestine:**

(a) To ensure that investigations into violations of international humanitarian law and international human rights law, including international crimes, by the Palestinian Authority, the authorities in Gaza and Palestinian armed groups, where substantiated, comply with international human rights standards and that full accountability is achieved, including through criminal proceedings;

(b) To accelerate efforts to translate the declarations on Palestinian unity into tangible measures on grounds that would enable the Government of national consensus to ensure the protection of human rights and to achieve accountability for victims.

88. **The commission calls upon the authorities in Gaza and Palestinian armed groups:**

(a) To respect the principles of distinction, proportionality and precaution, including by ending all attacks on Israeli civilians and civilian objects, and stopping all rocket attacks and other actions that may spread terror among the civilian population in Israel;

(b) To take measures to prevent extrajudicial executions and eradicate torture, cruel, inhuman and degrading treatment; to cooperate with national investigations aimed to bring those responsible for violations of international law to justice; and to combat the stigma faced by families of alleged collaborators.

89. **The commission calls upon the international community:**

(a) To promote compliance with human rights obligations, and to respect, and to ensure respect for, international humanitarian law in the Occupied Palestinian Territory and Israel, in accordance with article 1 common to the Geneva Conventions;

(b) To use its influence to prevent and end violations, and to refrain from encouraging violations by other parties;

(c) To accelerate and intensify efforts to develop legal and policy standards that would limit the use of explosive weapons with wide-area effects in populated areas with a view to strengthening the protection of civilians during hostilities;

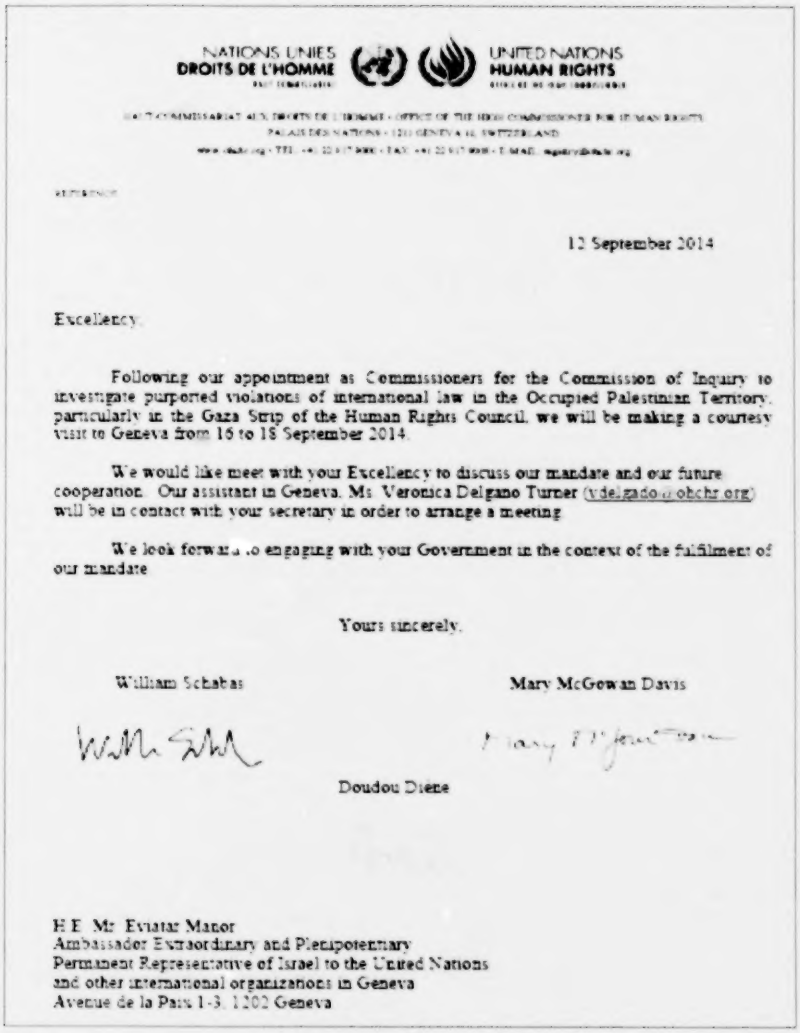
(d) To support actively the work of the International Criminal Court in relation to the Occupied Palestinian Territory; to exercise universal jurisdiction to try international crimes in national courts; and to comply with extradition requests pertaining to suspects of such crimes to countries where they would face a fair trial.

90. **The commission recommends that the Human Rights Council consider conducting a comprehensive review of the implementation of the numerous recommendations addressed to the parties by its own mechanisms, in particular relevant commissions of inquiry and fact-finding missions, and explore mechanisms to ensure their implementation.**

Annexes

[English only]

I. Correspondence



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12 September 2014

Excellency,

Following our appointment as Commissioners for the Commission of Inquiry to investigate purported violations of international law in the Occupied Palestinian Territory, particularly in the Gaza Strip of the Human Rights Council, we will be making a courtesy visit to Geneva from 16 to 18 September 2014.

We would like meet with your Excellency to discuss our mandate and our future cooperation. Our assistant in Geneva, Ms. Veronica Delgano Turner (vdelgado@ohchr.org) will be in contact with your secretary in order to arrange a meeting.

We look forward to engaging with your Government in the context of the fulfilment of our mandate.

Yours sincerely,

William Schabas

Mary McGowan Davis

Doudou Diene

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16 October 2014

Excellency,

I am writing in my capacity as Chair of the United Nations Independent Commission of Inquiry on the 2014 Gaza Conflict. Mary McGowan Davis, Doudou Diene being the two other Commissioners. We were appointed by the President of the Human Rights Council, His Excellency Ambassador Baudelaire Ndong Ella, in August 2014.

The three Commissioners request your Government to provide them, as well as the staff members of its Secretariat, access to Israel. In order to implement our mandate, we need to visit Israel and to have access via Israel to the Gaza strip and the West Bank. In accordance with its mandate, the Commission is investigating alleged violations attributable to all parties to the conflict in these three areas. The cooperation of the Government of Israel will permit us to meet with victims and to visit locations where violations took place in all of these areas.

Given the short duration of our mandate and the request by the Human Rights Council that we report in March 2015, we wish to travel to the region for several weeks during November and December. Specifically, we would request your cooperation in travelling to Israel and visiting its territory in order to investigate rocket attacks emanating from Gaza as well as to meet with civilian and military officials in the Government of Israel able to provide us with information about these attacks as well as about activities of the Government of Israel in the Gaza strip and the West Bank that are relevant to the conflict. In addition, we seek your assistance in facilitating access so as to conduct our work in the Gaza strip and the West Bank.

I also take this opportunity to reiterate our request for a meeting with Your Excellency in order to further discuss the work of the Commission. We will be in Geneva next week should a meeting with you be possible and convenient.

Please accept, Excellency, the assurances of my highest consideration.

William Schabas
Chair
Commission of Inquiry on the 2014 Gaza Conflict

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UNITED NATIONS INDEPENDENT COMMISSION OF INQUIRY ON THE 2014 GAZA CONFLICT
PALAIS DES NATIONS • 1211 GENEVA 10 SWITZERLAND
www.ohchr.org
• TEL: +41 22 917 9000 • FAX: +41 22 917 9008 • E-MAIL: coigaza@ohchr.org

REFERENCE: COI.Gaza/WS/KL/vdS 24 November 2014

Excellency,

I refer to the letter dated 16 October 2014 with regard to the United Nations Independent Commission of Inquiry on the 2014 Gaza conflict.

The Commission would like to reiterate the request for cooperation in implementing its mandate, including by providing access to Israel and facilitating access to the West Bank, including East Jerusalem and the Gaza Strip to enable the Commission to meet with victims of alleged violations and relevant authorities, including military officials. We would also respectfully request access to all documentation relevant to our inquiry.

The Commission reiterates its firm conviction that in order to examine all incidents relevant to its mandate and investigate alleged violations committed by all parties, including rocket attacks that emanated from Gaza and its impact on Israeli citizens, it is crucial that the Commission visit all affected areas.

The Commission intends to conduct field visits in the coming two months. The delegation will be composed by the three Commissioners, accompanied by staff of the Secretariat.

The Commission will be in Geneva on 26 and 27 November 2014, and would like to take this opportunity to reiterate our request for a meeting with Your Excellency in order to further discuss the work of the Commission.

Please accept, Excellency, the assurances of my highest consideration.

William Schabas
Chair
United Nations Independent Commission of Inquiry
on the 2014 Gaza Conflict

His Excellency
Mr. Eviatar Manor
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Israel to the United Nations
and other International Organizations at Geneva
Avenue de la Paix 1-3, 1202 Geneva
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REFERENCE: COI Gaza/WS/KL/s/6 7 January 2015

Excellency,

I refer to our previous correspondence with regard to the United Nations Independent Commission of Inquiry on the 2014 Gaza conflict. The Commission would like to once again reiterate the request for cooperation in implementing its mandate, including by providing access to Israel and facilitating access to the West Bank, including East Jerusalem and the Gaza Strip to enable the Commission to meet with victims of alleged violations and relevant authorities.

The Commission wishes to make it clear that it interprets this mandate to include investigations of the activities of Palestinian armed groups in Gaza, including attacks on Israel. The Commission reiterates its firm conviction that in order to examine all incidents relevant to its mandate including assessing the impact of rocket and mortar attacks on Israeli citizens, it is crucial that the Commission visit all affected areas.

The Commission will be in Geneva from 12 to 16 January 2015, and would like to take this opportunity to reiterate our request for a meeting with Your Excellency in order to further discuss the work of the Commission.

Please accept, Excellency, the assurances of my highest consideration.

William Schabas
Chair
Commission of Inquiry on the 2014 Gaza Conflict

His Excellency
Mr. Eviatar Manor
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Israel to the United Nations
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REFERENCE: COI/Gaza/WS/KL/vdr

24 November 2014

Excellency,

I refer to our meeting of 17 September 2014 regarding the work of the United Nations Independent Commission of Inquiry on the 2014 Gaza Conflict and the possibility of us seeking the assistance of the Government of Egypt to facilitate the Commission's access to Gaza if access was not possible through Israel.

As we have not yet received a response to several requests to the Israeli authorities, we would like to express our desire to travel to Gaza through the Rafah crossing. The cooperation of the Government of Egypt will permit us to meet with victims and to visit locations where incidents that are relevant to the conflict may have taken place.

The Commission very much appreciates receiving the valuable support of the Government of Egypt in facilitating the delegation's travel to Gaza through the Rafah crossing. We have started conducting interviews with victims and witnesses and we intend to carry out field investigations in Gaza in January. The cooperation of your Excellency's Government will permit us to meet with victims and to visit locations where incidents that are relevant to the conflict may have taken place.

The Commission intends to travel to Gaza for 10 to 15 days during the period of 9 to 25 January 2015. The delegation will be composed of the three Commissioners and will be accompanied by six to eight staff of the Secretariat. A detailed list of the members of the delegation will be sent to you ahead of the mission to allow sufficient time to complete the visa requirements and make any other necessary arrangements.

Please accept, Excellency, the assurances of my highest consideration.

William Schabas
Chair
United Nations Independent Commission of Inquiry
on the 2014 Gaza Conflict

His Excellency
Mr. Amr Ramadan
Ambassador
Permanent Representative of Egypt to the United Nations
and other International Organizations at Geneva
Avenue Blanc 49
1202 Geneva
E-mail: mission.egypt@bluewin.ch

II. Stakeholders consulted by the commission of inquiry*

Diplomatic missions

Permanent Mission of the Republic of Cyprus to the United Nations Office at Geneva and other international organizations in Switzerland

Permanent Mission of the Arab Republic of Egypt to the United Nations Office and other international organizations in Geneva

Permanent Mission of France to the United Nations Office and other international organizations in Geneva

Permanent Mission of the Federal Republic of Germany to the United Nations Office and other international organizations in Geneva

Permanent Mission of Ireland to the United Nations Office and other international organizations in Geneva

Permanent Mission of the Hashemite Kingdom of Jordan to the United Nations Office and other international organizations in Geneva

Permanent Mission of the State of Qatar to the United Nations Office and other international organizations in Geneva

Permanent Mission of the Russian Federation to the United Nations and other international organizations in Geneva

Permanent Mission of the Republic of Rwanda to the United Nations Office and other international organizations in Geneva

Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations Office and other international organizations in Geneva

Permanent Observer Mission of the State of Palestine to the United Nations Office and other international organizations in Geneva

Permanent Delegation of the European Union to the United Nations Office and other international organizations in Geneva

Domestic authorities

State of Palestine

Ministry of Agriculture

Ministry of Health

Ministry of the Interior

Office of the Prosecutor

* In the light of the commission's confidentiality policy, it should be noted that inclusion in this list was done on the basis of explicit authorization by the relevant party. Therefore, the list is not exhaustive and includes only those persons and organizations that authorized the commission to be mentioned in the report.

Central Bureau of Statistics

Jerusalem Governorate

Palestinian Liberation Organization

Higher National Commission for Prisoners and Detainees Affairs

Negotiations Support Unit

Authorities in Gaza

Other official meetings

Ministry of Foreign Affairs of the Hashemite Kingdom of Jordan

United Nations and international organizations

Human Rights Council, President

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

Office for the Coordination of Humanitarian Affairs

United Nations Children's Fund

United Nations Entity for Gender Equality and the Empowerment of Women

United Nations Headquarters Board of Inquiry into certain incidents that occurred in the Gaza Strip between 8 July 2014 and 26 August 2014

United Nations High Commissioner for Human Rights

Office of the United Nations High Commissioner for Human Rights

Office of the United Nations High Commissioner for Human Rights, Occupied Palestinian Territory

United Nations Institute for Training and Research Operational Satellite Applications Programme

United Nations Relief and Works Agency for Palestine Refugees

World Health Organization

Non-governmental organizations

Adalah – The Legal Center for Arab Minority Rights in Israel

Al-Haq

Addameer Prisoner Support and Human Rights Association

Al Mezan Center for Human Rights

Amnesty International

Badil – Resource Center for Palestinian Residency and Refugee Rights

Civic Coalition for Palestinian Rights in Jerusalem

Defence for Children International Palestine

Diakonia

Euromid Observer for Human Rights

Human Rights Watch

International Association of Jewish Lawyers and Jurists

International Federation for Human Rights

Palestinian Centre for Human Rights

Palestinian Medical Relief Society

Physicians for Human Rights – Israel

Public Committee Against Torture in Israel

Other Voices from the South

Women's Affairs Center of Palestine

Women's Affairs Technical Committee of Palestine

Women's Centre for Legal Aid and Counselling

UN Watch

Experts

Doctor Mads Gilbert

Colonel (ret.) Richard Kemp

Daniel Reisner

Professor Marco Sassoli

III. Submissions to the commission of inquiry*

United Nations agencies, offices and special procedures mandate holders

Office for the Coordination of Humanitarian Affairs

Office of the United Nations High Commissioner for Human Rights

United Nations Children's Fund

United Nations Development Programme

United Nations Entity for Gender Equality and the Empowerment of Women

United Nations Institute for Training and Research Operational Satellite Applications Programme

United Nations Mine Action Service

United Nations Relief and Works Agency for Palestine Refugees

World Health Organization

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Special Rapporteur on violence against women, its causes and consequences

Non-governmental organizations

Adalah – The Legal Center for Arab Minority Rights in Israel

Addameer – Prisoner Support and Human Rights Association

Al Dameer Association for Human Rights

Al-Haq

Alkarama Foundation

Al Mezan Center for Human Rights

American Association of Jurists

Amnesty International

Arab Lawyers Union

Artificial Limbs and Polio Center in Gaza

Badil-Resource Center for Palestinian Residency and Refugee Rights

Bara'm El-Funoun Palestinian Dance Troupe

Civic Coalition for Palestinian Rights in Jerusalem

* In the light of the commission's confidentiality policy, it should be noted that inclusion in this list was done on the basis of explicit authorization by the relevant party. Therefore, the list is not exhaustive and includes only those persons and organizations that authorized the commission to mention their submissions in the report.

Defence for Children International – Palestine and Israel Section

Euromid Observer for Human Rights

Forensic Architecture

HaMoked – Center for the Defence of the Individual

High Level International Military Group

Hemaya Centre for Human Rights

International Association of Democratic Lawyers

International Association of Jewish Lawyers and Jurists

International Federation for Human Rights

International Network on Explosive Weapons

Jerusalem Center for Genocide Prevention and Hebrew University Hadassah Genocide Prevention Program

Jerusalem Center for Public Affairs

Kvinna till Kvinna Foundation

Lawyers for Palestinian Human Rights

Mada – Palestinian Center for Development and Media Freedoms

National Lawyers Guild, Palestine Subcommittee

NGO Monitor

Palestinian Centre for Human Rights

Palestinian Medical Relief Society

Palestinian Working Women Society for Development

Physicians for Human Rights Israel

Public Committee against Torture in Israel

Rural Women's Development Society

Society of St. Yves, Catholic Center for Human Rights

The Lawfare Project

Women's Centre for Legal Aid and Counselling

UK Lawyers for Israel

Individual submissions**

Charles Abelsohn

Professor Amichai Cohen

Denis Mac Eoin

** The list does not include the large number of e-mails and letters received recounting individual experiences

Doctor Mads Gilbert

Jonathan Tate Harris

Eado Hecht

Colonel (ret.) Richard Kemp

Trevor S. Norwitz

Maurice Ostroff

United Nations A/HRC/29/53

General Assembly

Distr.: General
6 May 2015

Original: English

Human Rights Council
Twenty-ninth session
Agenda item 2
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Measures taken to implement Human Rights Council resolution 9/8 and obstacles to its implementation, including recommendations for further improving the effectiveness, harmonization and reform of the treaty body system

Report of the Secretary-General

GE.15-08949 (E)

1508949

Please recycle

1. In its resolution 9/8, the Human Rights Council requested the Secretary-General to report annually to the Council on measures taken to implement resolution 9/8 and on obstacles to its implementation, including recommendations for further improving the effectiveness of, harmonizing and reforming the treaty body system. The present report is submitted pursuant to that request.

2. In its resolution 68/268, the General Assembly requested the Secretary-General to present to the Assembly, on a biennial basis, a comprehensive report on the status of the treaty body system and the progress achieved by the treaty bodies in achieving greater efficiency and effectiveness in their work, including the number of reports submitted and reviewed by the committees, the visits undertaken and the individual communications received and reviewed, where applicable, the state of the backlog, capacity-building efforts and results achieved, as well as the situation in terms of ratifications, increased reporting and the allocation of meeting time and proposals on measures, including on the basis of information and observations from Member States, to enhance the engagement of all State parties in the dialogue with the treaty bodies. The first report of the Secretary-General prepared pursuant to resolution 68/268 will be submitted to the Assembly in 2016.

3. In the light of the overlapping reporting obligations, the report of the Secretary-General prepared pursuant to Human Rights Council resolution 9/8 was postponed from the twenty-eighth session of the Council to the twenty-ninth (see A/HRC/28/21).

4. Comprehensive information on the topics raised in Human Rights Council resolution 9/8 is available at the following websites:

- Ratification status by country or by treaty:

  http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx

- Status of ratification maps:

  http://indicators.ohchr.org/

- Reporting status to human rights treaty body:

  http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx

- Timely, late and non-reporting to human rights treaty bodies:

  http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/LateReporting.aspx

- Calendar of country reviews by treaty bodies:

  http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/MasterCalendar.aspx

- Common core documents:

  http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/CoreDocuments.aspx

- Treaty body database (search engine for treaty body documentation):

  http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx

- Universal Human Rights Index (search engine for recommendations made by human rights mechanisms):

  http://uhri.ohchr.org

- Jurisprudence database:

  http://juris.ohchr.org

5. The following documents also contain information on the issues raised in Human Rights Council resolution 9/8:

- Note by the Secretariat on timely, late and non-reporting by States parties to the human rights treaty bodies (HRI/MC/2015/5)
- Note by the Secretariat on implementation by treaty bodies of the conclusions and recommendations of the treaty body chairpersons at their twenty-sixth meeting in the framework of General Assembly resolution 68/268 (HRI/MC/2015/2)
- Reports of the twenty-fifth and twenty-sixth meetings of the Chairpersons of treaty bodies (A/68/334 and A/69/285)
- Report of the Secretary-General on measures taken to implement Human Rights Council resolution 9/8 and obstacles to its implementation, including recommendations for further improving the effectiveness, harmonization and reform of the treaty body system (A/HRC/25/22)
- Overview of the human rights treaty body system and working methods related to the review of States parties (HRI/MC/2013/2 and Corr.1)
- Other activities of the human rights treaty bodies and participation of stakeholders in the human rights treaty body process (HRI/MC/2013/3 and Corr.1)

6. Reference is also made to relevant information included in the session, annual and biennial reports of the treaty bodies:

- Committee on the Elimination of Racial Discrimination

  Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 18 (A/69/18)

- Committee on Economic, Social and Cultural Rights

  Official Records of the Economic and Social Council, 2014, Supplement No. 2 (E/2014/22)

- Human Rights Committee

  Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 40 (A/69/40), Vols. I and II

- Committee on the Elimination of Discrimination against Women

  Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 38 (A/68/38)

- Committee against Torture

  Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 44 (A/69/44)

- Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

  CAT/C/52/2

- Committee on the Rights of the Child

  Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 41 (A/69/41)

- Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 48 (A/69/48)

- Committee on the Rights of Persons with Disabilities

  CRPD/C/11/2 and CRPD/C/12/2

- Committee on Enforced Disappearances

  Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 56 (A/69/56)

7. Further relevant information will be provided in the report of the Secretary-General, which will be submitted to the General Assembly at its seventieth session, pursuant to Assembly resolution 68/268.

United Nations A/HRC/29/54

General Assembly

Distr.: General
15 June 2015

Original: English

Human Rights Council
Twenty-ninth session
Agenda item 9
Racism, racial discrimination, xenophobia and related forms of intolerance: follow-up to and implementation of the Durban Declaration and Programme of Action

Group of independent eminent experts on the implementation of the Durban Declaration and Programme of Action*

Note by the Secretariat

In paragraphs 12 and 13 of its resolution 69/162, the General Assembly reiterated its requests to the Secretary-General, pursuant to its resolution 68/151, to revitalize and reactivate the operational activities of the group of independent eminent experts on the implementation of the Durban Declaration and Programme of Action, and reiterated its invitation to the Human Rights Council, pursuant to paragraph 16 of Assembly resolution 68/151, to ensure the visibility, effective participation and optimal utilization of the vast knowledge and experience of the group of independent eminent experts within its subsidiary structures, charged with the mandate of and responsibility for the comprehensive follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the effective implementation of the Durban Declaration and Programme of Action, and in this regard requested the Council to submit a progress report to the Assembly at its seventieth session.

In this context, the Secretariat hereby informs the Human Rights Council of the latest developments with regard to the group of independent eminent experts since its third meeting, held on 4 February 2014.

At the third meeting of the group of independent eminent experts, Salim Ahmed Salim alluded to his withdrawal from the group to allow for the appointment of another person able to devote the time required to the work (A/HRC/26/56, para. 10). To date, the Secretariat has not received any news to that effect, and continues to send him information and requests regarding the work of the group.

* Late submission

GE.15-09770 (E)

1509770

Please recycle

In his letter to the Secretary-General dated 8 April 2015, Prince El Hassan bin Talal resigned as independent eminent expert on the implementation of the Durban Declaration and Programme of Action.

The fourth meeting of the group of the independent eminent experts was held on 28 April 2015, in Geneva, with the participation of Hanna Suchocka and Edna Maria Santos Roland. During the meeting, the eminent experts discussed the possibility of and need for a number of arrangements in the future regarding the definition of the group's mandate, the appointment of new members and additional resources. The two experts decided to convey promptly their views to the Secretary-General.